ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೪೯ **Volume 149**	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಏಪ್ರಿಲ್ ೧೦, ೨೦೧೪ (ಚೈತ್ರ ೨೦, ಶಕ ವರ್ಷ ೧೯೩೬) **Bangalore, Thursday, April 10, 2014 (Chaithra 20, Shaka Varsha 1936)**	ಸಂಚಿಕೆ ೧೫ **Issue 15**

ಭಾಗ ೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 2 ಕೇಶಾಪ್ರ 2014, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 21–02–2014.

2014ನೇ ಸಾಲಿನ 01–01–2014ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ–II ಸೆಕ್ಷನ್ (1) ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ The Appropriation (No. 5) Act 2013 (No. 2 of 2014) ದಿನಾಂಕ : 01–01–2014 ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,

ಆರ್.ಆಂಜಿನಿ,

ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ

ಸರ್ಕಾರದ ಉಪಕಾರ್ಯದರ್ಶಿ,

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 1st January, 2014

Pausa 11, 1935 (Saka)

The following Act of Parliament received the assent of the President on the 1st January, 2014 and is hereby published for general information:-

THE APPROPRIATION (NO. 5)ACT 2013 (No.2 OF 2014)

[1st January 2014]

An Act to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 2013-14.

Be it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:

1. Short title :- This Act may be called the Appropriation (No.5) Act, 2013.

2. Issue of Rs. 18594,127,00,000 out of the Consolidated Fund of India for the financial year 2013-14 :- From and out of the Consolidated Fund of India there may be paid and applied sums not exceeding those specified in column 3 of the Schedule

amounting in the aggregate to the sum of eighteen thousand five hundred ninety-four crore and twenty-seven lakh rupees only towards defraying the several charges which will come in the course of payment during the financial year 2013-14 in respect of the services specified in column 2 of the Schedule.

3. Appropriation :- The sums authorised to be paid and applied from and out of the Consolidated Fund of India by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year.

THE SCHEDULE

(See sections 2 and 3)

No. of Vote	Services and purposes			Sums not exceeding		
				Voted by Parliament	Charged on the Consolidated Fund	Total
				Rs.	Rs.	Rs.
1	Department of Agriculture and Co-operation	….	Revenue	4,00,000	…	4,00,000
		….	Capital	1,00,000	…	1,00,000
4	Atomic Energy	….	Revenue	2,00,000	…	2,00,000
		….	Capital	3,00,000	…	3,00,000
5	Nuclear Power Schemes	….	Capital	1,00,000	…	1,00,000
7	Department of Fertilisers	….	Revenue	2000,00,00,000	…	2000,00,00,000
8	Department of Pharmaceuticals	….	Capital	1,00,000	…	1,00,000
9	Ministry of Civil Aviation	….	Revenue	2,00,000	…	2,00,000
		….	Capital	30.00,00,000	…	30.00,00,000
10	Ministry of Coal	….	Revenue	100,00,00,000	…	100,00,00,000
		….	Capital	1672,00,00,000	…	1672,00,00,000
11	Department of Commerce	….	Revenue	54,00,00,000	20,00,000	54,20,00,000
12	Department of Industrial Policy and Promotion	….	Revenue	1,00,000	4,00,000	5,00,000
		….	Capital	8,00,00,000	…	8,00,00,000
13	Department of Posts	….	Revenue	…	12,00,000	12,00,000
		….	Capital	…	67,00,000	67,00,000
14	Department of Telecommunications	….	Capital	2,00,000	…	2,00,000
17	Department of Food and Public Distribution	….	Revenue	1,00,000	…	1,00,000
19	Ministry of Culture	….	Revenue	4,00,000	…	4,00,000
		….	Capital	1,00,000	…	1,00,000
22	Defence Services - Army	….	Revenue	1,00,000	…	1,00,000
25	Defence Ordinance Factories	….	Revenue	1,00,000	…	1,00,000
27	Capital Outlay on Defence Services	….	Capital	1,00,000	…	1,00,000
28	Ministry of Development of North Eastern Region	….	Revenue	1,00,000	…	1,00,000
		….	Capital	1,00,000	…	1,00,000
31	Ministry of Environment and Forests	….	Revenue	1,00,000	…	1,00,000
32	Ministry of External Affairs	….	Revenue	1,00,000	…	1,00,000
		….	Capital	125,00,00,000	…	125,00,00,000
33	Department of Economic Affairs	….	Revenue	65,56,00,000	…	65,56,00,000
		….	Capital	2,00,000	…	2,00,000
34	Department of Financial Services	….	Revenue	800,00,00,000	…	800,00,00,000

No. of Vote	Services and purposes			Sums not exceeding		
				Voted by Parliament	Charged on the Consolidated Fund	Total
				Rs.	Rs.	Rs.
36	Transfers to State and Union territory Governments,	….	Revenue	63,69,00,000	…	63,69,00,000
39	Department of Expenditure	….	Revenue	1,00,000	…	1,00,000
42	Department of Revenue	….	Revenue	1,00,000	26,50,00,000	26,51,00,000
43	Direct Taxes	….	Capital	1,00,000	…	1,00,000
44	Indirect Taxes	….	Revenue	31,03,00,000	…	31,03,00,000
		….	Capital	1,00,000	…	1,00.000
47	Department of Health and Family Welfare	….	Revenue	5,00,000	16,29,00,000	16,34,00,000
		….	Capital	1,00,000	…	1,00,000
48	Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH)	….	Capital	18,00,00,000	…	18,00,00,000
49	Department of Health Research	….	Revenue	2,00,000	…	2,00,000
51	Department of Heavy Industry	….	Revenue	442,54,00,000	…	442,54,00,000
		….	Capital	3,00,000	…	3,00,000
53	Ministry of Home Affairs	….	Revenue	1,00,000	…	1,00,000
55	Police	….	Revenue	2222,11,00,000	8,17,00,000	2230,28,00,000
		….	Capital	1,02,00,000	…	1,02,00,000
56	Other Expenditure of the Ministry of Home Affairs	….	Revenue	2,00,000	…	2,00,000
		….	Capital	1,00,000	…	1,00,000
57	Transfers to Union territory Governments	….	Revenue	64,00,000	…	64,00,000
		….	Capital	9,96,00,000	…	9,96,00,000
58	Ministry of Housing and Urban Poverty Alleviation.	….	Revenue	3,00,000	…	3,00,000
59	Department of School Education and Literacy	….	Revenue	2,00,000	…	2,00,000
60	Department of Higher Education	….	Revenue	4,00,000	…	4,00,000
61	Ministry of Information and Broadcasting	….	Revenue	3,00,000	…	3,00,000
		….	Capital	1,70,00,000	…	1,70,00,000
64	Law and Justice	….	Revenue	4,00,000	…	4,00,000
66	Ministry of Micro, Small and Medium Enterprises	….	Revenue	1,00,000	…	1,00,000
67	Ministry of Mines	….	Capital	5,00,00,000	……	5,00,00,000
69	Ministry of New and Renewable Energy	….	Revenue	183,41,00,000	…	183,41,00,000
73	Ministry of Personnel, Public Grievances and Pensions	….	Revenue	8,15,00,000	2,27,00,000	10,42,00,000
74	Ministry of Petroleum and Natural Gas	….	Revenue	10336,00,00,000	…	10336,00,00,000
76	Ministry of Power	….	Revenue	2,00,000	…	2,00,000
		….	Capital	125,00,00,000	…	125,00,00,000
	CHARGED. – Staff, Household and Allowances of the President	….	Revenue		4,50,00,000	4,50,00,000

No. of Vote	Services and purposes			Sums not exceeding		
				Voted by Parliament	Charged on the Consolidated Fund	Total
				Rs.	Rs.	Rs.
83	Department of Rural Development	….	Revenue	2,00,000	…	2,00,000
84	Department of Land Resources	….	Revenue	1,00,000	…	1,00,000
88	Ministry of Shipping	….	Capital	1,00,000	…	1,00,000
89	Ministry of Social Justice and Empowerment	….	Revenue	2,00,000	…	2,00,000
91	Ministry of Statistics and Programme Implementation	….	Revenue	2,00,000	…	2,00,000
93	Ministry of Textiles	….	Revenue	6,00,000	…	6,00,000
		….	Capital	50,00,000	…	50,00,000
94	Ministry of Tourism	….	Revenue	2,00,000	…	2,00,000
		….	Capital	1,00,00,000	…	1,00,00,000
95	Ministry of Tribal Affairs	….	Revenue	1,00,000	74,35,00,000	74,36,00,000
96	Andaman and Nicobar Islands	….	Revenue	122,27,00,000	…	122,27,00,000
97	Chandigarh	….	Capital	1,00,000	…	1,00,000
100	Lakshadweep	….	Revenue	4,00,000	…	4,00,000
101	Department of Urban Development	….	Revenue	2,00,000	11,87,00,000	11,89,00,000
		….	Capital	1,00,000	21,70,00,000	21,71,00,000
102	Public Works	….	Revenue	1,00,000	…	1,00,000
		….	Capital	1,00,000	…	1,00,000
104	Ministry of Water Resources	….	Revenue	3,00,000	…	3,00,000
105	Ministry of Women and Child Development	….	Revenue	1,00,000	…	1,00,000
	TOTAL	**….**		**18427,59,00,000**	**166,68,00,000**	**18594,27,00,000**

P.K. MALHOTRA,

Secy. to the Govt. of India.

CORRIGENDA

In the Companies Act, 2013 (18 of 2013), as published in the Gazette of India, Extraordinary, Part II, Section I, Issue No. 27, dated the 30th August, 2013,-

1. At page 6, line 21 .for "sub-section (5)", read "sub-section (6)".
2. At page 58, line 33,for"fee", read "fees".
3. At page 61, line '7 for "requisitonists", read "requisitionists".
4. At page 67, line 5, for "fee", read "fees".
5. At page 69, line 6, for "fee", read "fees".
6. At page 77, line 23, for "his", read "this".
7. At page 88, line 23,for "company,", read "company),".
8. At page 92, line 29, for "sub-section (5)", read "sub-section (6)".
9. At page 97, line 26,for "disposed off', read "disposed of'.
10. At page 115, line 4,for "or transactions not", read' "or transactions".
11. At page 223, line 5,for "established" read "established or designated".
12. At page 226, line 10,for "or Tribunal", read "or the Tribunal".
13. At page 273, line I5, for "Investment", read "Investments' .

14. At page 289, line 12,for "Section I or II", read "Section I or Section II".
15. At page 294, line 2,for "sections", read 'section".
16. At page 294, line 9,for "mortlity", read·'mortality".

R. ANJINI
Assistant Draftsman & Ex-officio
Deputy Secretary to Government
Department of Parliamentary Affairs & Legislative.

P.R. 36
S.C. 20

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

NOTIFICATION

dated : 14th February, 2014
25 Magha, 1935 (Saka)

No.82/KT-HP/(2 & 3 of 2009) 2014-In pursuance of Section 106 (a) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 16th January, 2014 of the High Court of Karnataka in Election Petition No 2 & 3 of 2009 filed by Shri Prasanna Kumar & Sri M.G. Thippeswamy challenging Sri G.M. Siddeshwar & others the election of the Lok Sabha from 13-Davangere Parliamentary Constituency.

(Here print the order)

By Order,

TAPAS KUMAR
PRINCIPAL SECRETARY
ELECTION COMMISSION OF INDIA

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF JANUARY, 2014

BEFORE

THE HON'BLE MR. JUSTICE ASHOK B. HINCHIGERI

ELECTION PETITION No.2/2009

C/W ELECTION PETITION No. 3/2009

BETWEEN

Prasanna Kumar,
S/o Srinivasan,
Age 44 years, Advocate, 1st Main,
X Cross J.C. Extension,
Harihar 577 601. … Petitioner in E.P. No.2/2009

(By Sri Ko. Channabasappa, Advocate and
Sri B.M. Halaswamy, Advocate)

M.G. Thippeswamy,
S/o Gurusiddappa,
Age 69 years,
Senior Citizen, R/at No.691/1,
Bhagat Singh nagar,
Davanagere-577 002 … Petitioner in E.P. No.3/2009

(By Sri Prabhuling K. Navadgi, Advicate)

AND:

1. G.M.Siddeshwar,
   Major, S/o late G.Mallikarjuna,
   No.1906/25, "Mallikarjuna"
   Shabanur Banashankari Extension,
   Davanagere 577 005.

2. S.S.Mallikarjuna,
Major,
S/o Shamanur Shivashankarappa,
No.2633, MCC Block,
Davangere 577 004.

3. K.B.Kallerudreshappa,
Major, S/o late N.Basappa,
Medakeranahalli Village and Post,
Jagalur Taluk 577 553.

4. Dr.Hidayathur Rehman Khan,
Major, S/o Abdul Hafeez Khan,
No.41, 13th Cross, Chamarajpet,
Bangalore 560 026.

5. Idli Ramappa,
Major, S/o Hanumanthappa,
H.No.116/1, Sandurageri, 11th Ward,
Harapanahalli Town 583 131.

6. G.M.Sudesh,
Major, S/o G.Manjunath,
H.No.285, Shiramagondanahalli,
Davanagere Taluk 577 008.

7. Arundi Ningapa,
Major, S/o A.Mahadevappa,
H.No.188, Mathadakeri,
3rd Ward, Old Bus Stand,
Harapanahalli Town 583 131.

8. Alur M.G.Swamy,
Major, S/o Matada Gurubasappa,
Alur Post, Kudligi Taluk, Bellary.

9. Inayath Ali Khan,
Major, S/o Shoukath Ali Khan,
H.No.374/1, 3rd and 4th Cross,
Narasarajpet (East Division),
Old Bethur Road, Right Side,
Davanagere 577 002.

10. H.Eshwarappa Bhovi,
Major, S/o H.D.Hanumanthappa,
H.No.1724/24, Chandrodaya Mill Opposite,
P.B.Road, Davanagere 577 002.

11. H.M.Easanaullah Patel,
Major, S/o late H.M.Fazululla,
D.No.381/1, 10th Ward,
Anjaneya Extension,
Harapanahalli 583 131.

12. H.K.Kenchaveerappa,
Major, S/o late H.Gurubasappa,
Hebbalu Post, Anagodu Hobli,
Davanagere Taluk 577 556.

13. S.Chandrashekarappa,
Major, S/o late Siddappa,
Shyagale - 577 512,
Davanagere Taluk.

14. Jayanna Itagi,
Major, S/o late Basavarajappa Itagi,
No.5453/21, Veerabasava Nilaya,
MCC B Extension, 2nd Main,
7th Cross, Davanagere 577 004.

15. H.Nagaraj Palegar,
Major, S/o late Honnappa Nayaka,
Indiranagar, Malebennur,
Harihar Taluk 577 530.

16. M.Nagarajappa,
Major, S/o Malleshappa,
Bullapura Village,
Anagodu Post,
Davanagere Taluk 577 556.

17. L.S.Mallikarjun,
Major, S/o late S.L.Jayashankar,
No.32/A, 8th Main Road,
Rajamahal Vilas, Sadashivanagar,
Bangalore 560 080.

18. Maruthi H,
Major, S/o late Hanumanthappa,
D.No.920/92, Labour Colony,
4th Cross, Nittuvalli Road,
Davanagere 577 005.

19. Yogesh Rao Shindhe,
Major,
S/o late Ramachandra Rao Shinde,
Shanthinagar (Yellammanagar),
Ring Road, 4th Main Road, 7th Cross,
Davanagere 577 002.

20. A.Ramesh Huli,
Major, S/o Hanumanthappa,
No.86, Nittur Post,
Harapanahalli Taluk,
Davanagere District 583 131.

21. B.Rajashekaraiah,
Major, S/o late Dodda Ningappa
Bannikodu, Honnali Taluk 577 217.

22. Dr.Raju C,
Major, S/o late Dr.C.Veeranna,
D.No.473/2, Manjunatha Clinic and
Nursing Home, Hamsabhavi Circle,
Chamarajpet, Davanagere 577 002.

23. Loakanagouda Patil,
Major, S/o Mallamma,
Kankanhalli,
Doddethhinahalli Post,
Honnali Taluk 577 217.

24. T.Veeresh,
Major, S/o Thimmappa,
Halladakeri,
Harihar Town 577 601.

25. Dr. Sridhar Udupa,
Major, S/o Anandram Udupa,
D.No.1498, Shanda Nilaya,
5th Cross, Nituvalli New Extension,
Davanagere 577 005.

26. G.N.Siddesh,
Major, S/o Nagappa,
D.No.23, Anekonda,
Davanagere 577 002.

27. Subhan Khan,
Major, S/o Umar Khan,
H.No.1025, KTI Nagar,
2nd Cross, Davanagere 577 002.

28. B.Gnanaprakash,
Major, S/o B.Revanasiddappa,
H.No.1846/183,
Vinayaka Extension, Vidyanagar,
Davanagere 577 005.

(R-2 to R-28 deleted vide
Court order, dated 24.2.2010) ... Common Respondent

(By Sri M.B.Nargund and Sri C.S.Shashikanth, Advocates for the respondent in E.P.2/2009,

Sri P.S.Manjunath and Sri T.P.Vivekananda, Advocates for the respondent in E.P.3/2009)

E.P.No.2/2009 is filed under Section 81 of the Representation of People Act, 1951 by the petitioner - Sri Prasanna Kumar who is an elector in the 13 Davanagere Lok Sabha Constituency election held on 30.4.2009 along with his advocates Ko.Chennabasappa and Gangadhar G.D., praying that the Hon'ble Court may be pleased to accept this election petition for trial, declare the election of the first respondent the returned candidate as void and direct the Election Commission of India to hold fresh election to the Lok Sabha from 13 Davanagere Constituency to the vacancy caused by setting aside the election held on 30.4.2009 and etc.

E.P.No.3/2009 is filed under Section 81 of the Representation of People Act, 1951 by the petitioner - Sri M.G.Thippeswamy S/o Gurusiddappa who is an elector in the 13 Davanagere Lok Sabha Constituency election held on 30.4.2009 along with his advocate Sri Prabhuling K.Navadgi praying that the Hon'ble Court may be pleased to accept this election petition for trial, declare the election of the first respondent - the returned candidate as void and direct the Election Commission of India to hold fresh election to the Lok Sabha from 13 Davanagere Constituency to the vacancy caused by setting aside the election held on 30.4.2009 and etc.

These election petitions having being heard and reserved for orders on 31.10.2013, coming on for pronouncement of orders this day, the Court made the following:

ORDER

The petitioners have challenged the validity of the election of the respondent to the 15th Lok Sabha from 13 Davanagere Lok Sabha Constituency at the election held on 30.4.2009 and the result of the election declared on 16.5.2009.

2. The respondent had filed Misc.Cvl.386/2010 in E.P.No.2/2009 invoking Section 81(3), 83 and 86 of the Representation of the People Act, 1951 (hereinafter called 'the R.P.Act' for short) read with Order VII Rule 11 of CPC for the dismissal/rejection of the election petition and Misc.Cvl.No.1431/2010 invoking Order VI Rule 16 of CPC for striking out paragraph Nos.1(III) (i) to (iv), II(2) to (17). By a common order, dated 24.2.2010 both the applications were disposed of with a direction to the petitioner to attest each copy of the election petition and its annexures as the true copy. The respondent Nos.2 to 28 were ordered to be deleted from these proceedings. Paragraph Nos.III(iv) and II(15) of the election petition were ordered to be struck out.

3. The respondent filed Misc.Cvl.No.3269/2010 in E.P.No.3/2009 invoking Section 86, 87 and 100(1)(a)(d)(i)(iv) of the R.P.Act read with Order VII Rule 11(a) of CPC for the rejection of the election petition and Misc.Cvl.3270/2010 invoking Sections 86, 87 and 100(1)(a)(d)(i)(iv) of the R.P.Act read with Order VI Rule 16 of CPC for striking out paragraph Nos.3 to 11. The said applications were dismissed by a common order, dated 22.6.2010.

4. The order, dated 24.2.2010 in E.P.No.2/2009 was challenged before the Hon'ble Supreme Court by filing SLP(C)Nos.14172-14173/2010 - Civil Appeal Nos.2250- 2251/2013. The Hon'ble Supreme Court passed the interim order on 13.5.2010 as follows: "Trial shall go on, but no final order be in the meantime". Similarly, the order, dated 22.6.2010 in E.P.No.3/2009 was challenged by filing SLP(C) Nos.24886- 24889/2010 - Civil Appeal Nos.2252-2255/2013. The Hon'ble Supreme Court, by its interim order, dated 1.9.2010 directed that the judgment in E.P.No.3/2009 shall not be announced till further orders. The Honb'le Supreme Court dismissed the said appeals on 8.3.2013.

5. The case of the petitioner in E.P.No.2/2009 is that the acceptance of the nomination paper of the returned candidate (the respondent herein) is in violation of Section 9A of the R.P.Act, as the provisions contained in Section 100(1)(d)(i) of the R.P.Act are attracted to the respondent. The respondent was a Member of Parliament between 2004-2009. As the Member of Parliament, he recommended the construction of a large number of bus-shelters under the Member of Parliament Local Area Development Scheme (MPLADS). He recommended that the Principal, GMIT be the implementing authority for the construction work of these bus-shelters. The Principal, GMIT is only an employee of the respondent. The GMIT is being run by Srishyla Educational Trust of which the

respondent is the Chairman. The Principal is thus an employee of the respondent. The Principal is an agent and benamidhar of the respondent. Violating the guidelines of MPLADS, the respondent has chosen the implementing authority only to reap the benefits from the contract. The entrustment of the work to the Principal, GMIT is without calling for the tenders and is therefore in contravention of the provisions contained in the Karnataka Transparency in Public Procurements Act, 1999. The respondent also got the cost of the construction of the bus-shelters revised upward with a view to benefit himself. The Deputy Commissioner was acting blindly and at the behest of the respondent. The cost of the works executed amounting to ₹77.50 lakhs have been siphoned off into the funds of the said Trust.

6. The further pleadings in the petition are that even when the respondent was disqualified to contest the election, his nomination paper was improperly accepted by the Returning Officer. The objections to the nomination paper of the respondent were not duly considered by the Returning Officer. It was humanly not possible for the Returning Officer to consider the objections and the arguments till 1.42 p.m. on 13.4.2009 and thereafter dictate the order running into 6 pages and pronounce it at 2.46 p.m. The order over-ruling the objections must have been prepared even before the commencement of the arguments.

7. The petitioner has furnished the sequence of events on 11.4.2009 and 13.4.2009. As per the calendar of events, the scrutiny ought to have been over by 3:00 p.m. on 11.4.2009. But the scrutiny proceedings was adjourned from 11.4.2009 to 13.4.2009 leaving no time for the withdrawal of the nomination papers on the completion of the scrutiny proceedings. The JD(S) candidate, who had filed the nomination paper and who wanted to withdraw his candidature in favour of the Congress candidate could not withdraw his nomination paper, as the time had elapsed by 3.00 p.m. on 13.4.2009. It is because the scrutiny proceedings were stretched to 3.02 p.m., whereas the time for withdrawing the nomination papers was over at 3.00 p.m. itself on 13.4.2009. If only the JD(S) candidate and some independent candidates were permitted to withdraw their candidature, the Congress candidate, Sri S.S.Mallikarjuna would have been elected. The denial of opportunity to withdraw the nomination paper by some candidates has materially affected the result of the election.

8. The adjournment of the scrutiny from 11.4.2009 to 13.4.2009 is in violation of Section 36(5) of the R.P.Act and paragraph 11 of Chapter VI dealing with scrutiny in the hand-book for Returning Officer, brought out by the Election Commission of India.

9. The petitioner has a grievance over showing the initials of Mallikarjuna, an independent candidate, erroneously in the final list of candidates. Instead of showing his initials correctly as 'L.S', they are incorrectly and deliberately shown as 'S.S'. It is done only to mislead and confuse the voters at the time of polling. The said L.S.Mallikarjuna has polled 5691 votes. He stands fourth amongst the candidates in order of the votes secured by them. This seemingly small mistake has rendered the election of the respondent void.

10. The petitioner alleges that the respondent has exerted undue influence on the electorate. The respondent is said to have committed the corrupt practice within the provisions of Section 123(2) of the R.P.Act. One Sri Vijaya Kumar Kondajji and his wife Honnamma, who was elected from Jai Bhimanagar Ward to the City Municipal Council, Harihara on JD(S) ticket and who is also the President of the said local body, were actively campaigning for the Congress candidate, Sri S.S.Mallikarjuna. The respondent and his election agent and his supporters threatened Kondajji and Honnamma with dire consequences, if they continue to support the Congress candidate. On 30.4.2009 Kondajji and Honnamma were abused by BJP activist Kasturamma and by the local MLA Sri B.P.Harish, who was also an agent of the respondent. Because of the shouting, threatening, violence, etc. indulged in by the said local MLA, the said Kondajji was pushed around and hurt. He died on the spot in the melee. His wife Honnamma lodged a complaint with the Town Police, Harihara. This incident interfered with the very exercise of franchise by the voters, who were standing in the queue waiting to cast their ballot.

11. The averments of E.P.No.3/2009 are akin to those of E.P.No.2/2009. The respondent has chosen the Principal, GMIT as the implementing agency, though under paragraph 3.3 of the Guidelines of MPLADS it is for the District Authority to identify the implementing agency. The entrustment of the work to the Principal, GMIT is also in violation of paragraph 167(1) of the KPWD Code. The contract - works were still subsisting as on the date of the respondent filing his nomination paper and thereafter. As there was existing contract between the Government of India and the respondent through his employee, the benamidhar (Principal of GMIT), the respondent is disqualified under Section 9A of the R.P.Act.

12. The objections filed by Sri H.Maruthi, an independent candidate and by Alur Ningaraja, the President of B.S.P. Davanagere District, Davangere to the nomination paper of the respondent were belatedly overruled by the Returning Officer. In the process, the date and time fixed for the withdrawal of the nomination paper expired. As the scrutiny proceedings themselves went on till 3.02 p.m. on 13.4.2009 and as the time fixed for the withdrawal of nomination papers expired on 3.00 p.m., the candidates desirous of withdrawing the nomination papers were deprived of the opportunity to withdraw their nomination papers. The news that the JD(S) candidate was going to withdraw his nomination in favour of the Congress candidate, Sri S.S.Mallikarjuna was in wide circulation. As the time for the withdrawal of nomination papers expired at 3.00 p.m. on 13.4.2009, the name of the JD(S) candidate was officially published in the list of the validly contesting candidates. If the JD(S) candidate and some independent candidates were only to be given an opportunity to withdraw their nomination papers, the votes polled by them would have gone to the Congress candidate, Sri S.S.Mallikarjuna. The respondent secured 4,23,447 votes, whereas the Congress candidate S.S.Mallikarjuna secured 4,21,423 votes. If the JD(S) candidate and the independent candidates were only to be permitted to withdraw from the race, it would have added to the number of votes polled by the said Congress candidate. Thus, depriving some candidates of the opportunity to withdraw their nomination papers has materially affected the result of the election.

13. The publication of the list of contesting candidates is not as per the requirements of Section 38 of the R.P.Act. The names of the candidates belonging to the Indian National Congress, Bharathiya Janata Party, Bahujan Samaj Party and Janata Dal (S) should have been published in that order. The grievance appears to be that the JD(S) candidate's name is at Sl.No.1 in the list of candidates. Serious objection is taken to the wrong showing of the initials of Mallikarjuna, an independent candidate (SL.No.17 in the list). Though his initials are 'L.S', they are shown as 'S.S' to mislead and confuse the voters at the time of polling, because both the said independent candidate and the defeated Congress candidate have the same name 'Mallikarjuna'.

14. The respondent has filed separate and elaborate written statements in both the petitions. The threshold objection taken by the respondent is that the petitions suffer from the non-joinder of necessary parties. The allegations of disqualification, illegalities in the scrutiny of nomination papers and in publishing the list of the contesting candidates are denied. The allegations regarding exerting undue influence, non- compliance with the requirements of the statute and the rules framed thereunder are denied. The allegation of specifying the name of the implementing agency is termed as not fully correct. The respondent has averred that not even a single paisa from out of the money released under the MPLADS is credited to the Srishyla Educational Trust. The respondent has only recommended the places where the work has to be carried out.

15. It is denied that the respondent is the Chairman of Srishyla Educational Trust. It is claimed that the said Trust is a charitable trust established for the purposes of imparting education to the deprived persons, giving medical relief to the poor, etc. The respondent has denied that he has appointed the Principal of GMIT and that the Principal is his agent and benamidhar. The implementing agency is appointed by the District Authority. There is no violation of the guidelines and of Section 9A of the R.P.Act. The rates quoted by Davanagere City Corporation and other authorities were on the higher side. It is after due comparison with the various proposals that the District Authority consciously took the decision to appoint the Principal, GMIT as the implementing agency. Taking out the advertisement and calling for the tender is not provided for under the MPLADS. The questions of whether the selection of the implementing agency is proper and whether the execution of works is proper cannot be raised by the petitioner while invoking the jurisdiction of this Court under Section 100(1) of the R.P.Act. The escalation in the cost was necessitated on account of the holding of the mid-term poll to the State Assembly and the consequent delay in undertaking the works. The allegation that the cost has to be revised upward for the benefit of the respondent is denied. It is further stated that there was no contract either subsisting or completed between the respondent and the Union of India as on the date of filing the nomination paper. The respondent has alleged that the annexures produced by the petitioner are interpolated ones. It is denied that any amount towards the execution of the works came to be paid in advance. The District Authority has not acted at the behest of the respondent.

16. The Srishyla Educational Trust is neither a contractor nor it has the contractor-licence. The respondent is not a civil contractor. It is not his trade or business. He has not entered into any contract with the Government of India. The respondent has not suffered any disqualification. The acceptance of his nomination paper is proper.

17. In exercise of power conferred by Section 36(5) of the R.P.Act, the scrutiny of the nomination papers of some candidates was deferred. As the next day (12.4.2009) happened to be a general holiday, the Returning Officer fixed 13.4.2009 for the rebuttal to objections from the concerned candidates. At 10.30 a.m. on 13.4.2009 the advocate and representative of the respondent were present in the office of the Returning Officer to file the objections. The C.D.s produced by the petitioners are not accurate, as they are tampered and edited to the petitioners' convenience. The atmosphere in the office of the Returning Officer was surcharged and was chaotic. The Returning Officer has passed the order over-ruling the objections to the nomination paper of the respondent in accordance with law. The Returning Officer is not a novice. All the Returning Officers have been well-trained by the Election Commission of India. Instructions are issued to them from time to time by the Election Commission of India based on the judgments delivered by the Hon'ble Supreme Court of India and the High Courts regarding the probable objections that could be raised in the course of the scrutiny of nomination papers and the law in respect of the said objections. It would not take much time for any Returning Officer to recapitulate the judgments and incorporate their gist in his order on the objections to the nomination paper of the concerned candidate and the concerned candidate's reply thereto.

18. Seven candidates, whose nomination papers were accepted on 11.4.2009, filed their withdrawal forms. The withdrawals were also permitted by the Returning Officer. Nothing prevented Sri K.B.Kallerudreshappa from withdrawing his nomination before 3.00 p.m. on 13.4.2009. The JD(S) candidate has not made any positive effort to withdraw the nomination. The claim that if the JD(S) and the independent candidates had withdrawn their nomination papers, the Congress candidate Sri S.S.Mallikarjuna would have polled more number of votes than the respondent is imaginary. No material is placed along with the election petition to show that the said Sri Kallerudreshappa had made any public statement that he has retired from contest and thereby requesting the electorate, who intended to cast their votes in favour of the Congress candidate, Sri S.S.Mallikarjuna.

19. Neither the National President of JD(S) Sri H.D.Devegowda nor the District General Secretary of JD(S) had permitted the JD(S) candidate to withdraw the nomination form. The independent candidate Sri L.S.Mallikarjuna was not set up by the respondent. The mistake in printing the initials of the said independent candidate was ordered to be corrected by the Returning Officer when it was brought to his notice. The corrections were carried out one day prior to the elections. But in some of the booths where the corrections could not be carried out one day prior to the date of elections, the corrections were carried out in the first hour of the polling. It is not correct to contend that the said independent candidate, Sri L.S.Mallikarjuna secured 5691 votes, only because there was mistake in

showing his initials. The wrong showing of the initials 20 was not deliberate. It has not materially affected the outcome of the election. The respondent, his agents and his followers have not threatened Vijaya Kumar Kondajji, his wife Honnamma or any voter for that matter. The death of Kondajji was due to the heart-attack and not due to any violence, as falsely alleged by the petitioner.

20. The respondent has further stated that the Srishyla Educational Trust deed, dated 21.8.2000 was registered on 13.11.2000. On 15.11.2000 the respondent was co-opted as one of the trustees. Sri G.Mallikarjuna was acting as the Chairman of the said Trust. On Mallikarjuna's death on 30.11.2003, the respondent was appointed as the Chairman of the said Trust on 3.12.2003. The respondent resigned to the post of the Chairman/Life Trustee of the said Trust on 16.3.2009, which came to be accepted on 23.3.2009. The trustees and the family members can neither have personal interest nor appropriate the income of the Trust to themselves. The Trust has the benefit of Section 80G of the Income Tax Act. The respondent is not a contractor. As he has not entered into any contract with the Central Government either directly or indirectly, he is not disqualified under Section 9A of R.P.Act. The respondent states that the election petition does not contain full material facts showing any cause of action.

21. Based on the rival pleadings and the draft issues suggested by the learned advocates appearing for the parties, the Court formulated the following issues in E.P.No.2/2009:

1. Whether the petitioner proves that the respondent was on the date of election disqualified under Section 9A of the Representation of People Act, 1951 to be chosen to fill the seat of the 15th Lok Sabha Constituency No.13 - Davanagere Lok Sabha Constituency at the election held on 30.04.2009 and the result of the election declared on 16.05.2009?
2. Whether the petitioner proves that the provisions contained in Sections 36, 37 and 38 of the Representation of People Act, 1951 are violated? Whether the petitioner proves that the said violations, if any, have materially affected the result of the election of the respondent?
3. Whether the petitioner proves that the respondent, his election agent and others with their knowledge and consent, committed the corrupt practice within the meaning of Section 123(2) of the Representation of People Act, 1951 by exercising undue influence and by threatening Sri Vijayakumar Kondajji, his wife, Smt.Honnamma during the election campaign between 25th and 28th April 2009? Whether the petitioner proves that the respondent, his election agent and others with their knowledge and consent, threatened the voters in Jaibheemanagar on 26th, 27th and 28th April 2009?
4. Whether the election of the respondent is liable to be declared as void and further whether the Election Commission of India is to be directed to hold fresh election to Lok Sabha from No.13 Davanagere Constituency?

22. Issue Nos.1, 2 and 4 extracted hereinabove are also the issues framed in E.P.No.3/2009.

23. In both the petitions, common evidence is lead. The petitioners in E.P.No.2/2009 and E.P.No.3/2009 are respectively examined as PW1 and PW2. 4 independent witnesses are examined on behalf of the petitioners. Sri K.B.Kallerudreshappa, a JD(S) candidate in the election in question is examined as PW3. Sri B.T.Patil, the retired Principal of GMIT is examined as PW4. Dr. S.G.Hiremath, the Principal of GMIT is examined as PW5. Sri N.Manjunath Prasad, the Commissioner for Social Welfare, who was the Deputy Commissioner of Davanagere and the Returning Officer for the election in question is examined as PW6.

24. Sri G.M.Siddeshwar, the respondent is examined as RW1. 6 independent witnesses are examined on his behalf. Sri P.T.Umesh, the Accountant of GMIT, Davanagere is examined as RW2. Sri K.G.Kumar, Maintenance Engineer of GMIT, Davanagere is examined as RW3. Sri A.M.Shambulingappa, a voter in Davanagere Lok Sabha Constituency in Jagalur Assembly Segment is examined as RW4. Sri Y.S.Mahesh, who had filed the nomination paper and withdrew it, is examined as RW5. Sri B.Gnanaprakash, whose nomination paper was rejected, is examined as RW6. Sri H.R.Suresh, the Chartered Accountant of GMIT is examined as RW7. For the petitioners the documents at Ex.P1 to Ex.P94 are marked. MO1 to MO6 are marked for the petitioners. The documents at Ex.R1 to R24 are marked for the respondents.

25. Sri Ko.Channabasappa, the learned counsel for the petitioner in E.P.2/2009 submits that a member of Lok Sabha is like a Trustee for the people in a given Constituency. On electing their representative, the people continue to be his master. The object of the R.P.Act is to ensure that nobody becomes a member of legislature by resorting to corrupt and illegal practices.

26. Sri Ko.Channabasappa submits that the nomination papers of the candidates in the election in question are not scrutinized properly. As a matter of fact, there was no scrutiny in the eye of law. The Returning Officer is not the author of the order at Ex.P2. The order is written by somebody else. The learned counsel submits that the instructions in Chapter VI of the Election Manual were not followed by the Returning Officer. He submits that the Returning Officer performs the duty of quasi-judicial nature while scrutinizing the nomination papers and the objections to them. He brings to my notice the instructions in Clause 7:

"Scrutiny - A Quasi-Judicial Duty

> 7. While holding the scrutiny of nomination papers, you are performing an important quasi-judicial function. You have, therefore, to discharge this duty with complete judicial detachment and in accordance with the highest judicial standards. You must not allow any personal or political predilections to interfere with the procedure that you follow or the decision you take in any case. Fairness, impartiality and equal treatment to all candidates are expected of you by law. You must also devote yourself in such a manner that it would appear to all

concerned that you are following this high code of conduct. Even if a candidate or his agent is difficult or cantankerous, you must show courtesy and exercise patience. But at the 25 same time you have to be firm so that your task may be accomplished in a prompt, orderly and business like manner."

27. The learned counsel submits that even assuming that it was open to the Returning Officer to adjourn the scrutiny proceedings from 11.4.2009 to 13.4.2009, he ought to have completed the scrutiny proceedings before 11.00 a.m. on 13.4.2009. There is no provision in law for stretching the scrutiny proceedings till 3.00 p.m. on 13.4.2009. He read out the provisions contained in Instruction No.11 of Chapter VI from the said Manual, which are extracted hereinbelow:

"Adjournment of Hearing of Objection

11. If a candidate to whose nomination paper an objection has been taken applies for time to rebut such objection, you should adjourn the hearing of the objection till the next day or the day after that, but not beyond 11.00 a.m. on that day. The scrutiny of all other nomination papers must, of course, be completed on the day of scrutiny, notwithstanding such adjournment in respect of one or more nomination papers. If the day next is a holiday, the hearing should be completed before 11 a.m. on the day fixed for withdrawal of candidatures."

28. The learned counsel submits that there is violation of Instruction No.12 of Chapter VI of the Election Manual in as much as the Returning Officer has not drawn up the list of the validly nominated candidates in Form No.4 on the completion of the scrutiny of the nomination papers.

29. The learned counsel submits that the list of the contesting candidates at Ex.P19 shows the initials of the independent candidate as S.S.Mallikarjuna, although his correct initials are L.S.Mallikarjuna. Because of the confusion created by the wrong showing of the initials of the independent candidate, 5691 votes, which would have gone to the Congress candidate S.S.Mallikarjuan, are polled by the said independent candidate.

30. He submits that the Returning Officer (PW6) is not sure of the number of nomination papers scrutinized by him on 13.4.2009. The learned counsel read out the following part of the cross-examination of the Returning Officer:

"I do not exactly remember how many nomination forms had fallen for my scrutiny on 13.4.2009. There could be about 3 or 4 nomination forms which may have fallen for my scrutiny. How many forms were there can be borne out from the records."

31. The learned counsel read out the relevant portion of the cross-examination of PW6 (Returning Officer). They are as follows:

Suggestion: As you were continuously hearing objections till you pronounced the order, the candidates did not get the opportunity to withdraw their nominations.

The scrutiny proceedings were delayed only to deny opportunities to the candidates to withdraw their nomination papers.

Answer: The application for withdrawing the nominations can be made even before the Assistant Returning Officer. The candidates were given the opportunity to withdraw the nomination forms as per the Returning Officer's Hand Book.

32. The learned counsel submits that the Returning Officer has not delegated such a power to the Assistant Returning Officer. Nor such a power can be delegated to the Assistant Returning Officer.

33. The learned counsel brings to my notice that the respondent (RW1) himself is the star witness for the petitioners. In the course of cross-examination, the respondent has admitted that the staff members of GMIT are being appointed by the Srishyla Educational Trust. The Principal of GMIT is only an alter ego of the respondent. By resorting to a dubious method, the respondent got the Principal of GMIT appointed as the implementing agency for the construction of the bus-shelters under the MPLADS.

34. The entrustment of the implementation of the work of constructing the bus-shelters under Ex.P8 to the Principal of GMIT is with the motive to knock off the public funds. The learned counsel submits that the respondent has got the Principal of GMIT appointed as the implementing agency so that the amounts released under the MPLADS can be transferred from the Principal's account to the account of Srishyla Educational Trust.

35. Relying on the Apex court's judgment in the case **of <u>KONAPPA RUDRAPPA NADGOUDA v. VISHWANATH REDDY AND ANOTHER</u>** reported in **<u>AIR 1969 SC 447,</u>** the learned counsel contends that a contractor who is still holding a contract with the Government is considered disqualified, because he is in a position after successful election to get the concession for himself in the performance of his contract. If the contract subsists in such manner that it cannot be said to have been substantially completed, the disqualification under Section 9A of the R.P.Act is attracted. The learned counsel also relies on the same judgment to buttress his submission that Section 9A of the R.P.Act is applicable whether the returned candidate is a contractor by himself or a partner in the firm, which has taken up the contract work. The law requires that a candidate should not have any interest in any contract with the Government; and even a partner has an interest sufficient to attract the provisions of Section 9A.

36. To show that the works had remained incomplete in 2009, the learned counsel read out the following portions from the deposition of PW4:

"Four or five works remained incomplete, when I left GMIT in 2009. I do not remember what amount I had received from the Government."

37. He submits that Ex.P13 shows the envisaged cost for the construction of the bus-shelter near SOG Colony, Davanagere as ₹2 lakhs. The said document further shows that ₹1 lakh was already released and the balance ₹1 lakh was yet to be released and that the work was still in progress. This information is as on 2.6.2009, which is evident from the said document itself. As belatedly as on 2.6.2009, when the contract was subsisting, the respondent's nomination paper ought not to 30 have been accepted on 13.4.2009. He submits that Ex.P13 further furnishes the information in respect of the on-going construction work of 3 bus-shelters in Honnalli Taluk.

38. Drawing support from the afore-referred judgment of the Hon'ble Apex Court, the learned counsel would contend that the respondent's hair-splitting arguments that the GMIT and the respondent are different cannot be accepted. The Principal, GMIT is only a benamidhar. If he only drops the mask, which he has been wearing, the respondent cannot escape from the consequences of Section 9A of the R.P.Act.

39. He also relied on the Apex Court's judgment in the case of SEWARAM v. SOBARAN SINGH reported in **AIR 1993 SC 212,** wherein the contract was held to be subsisting on the dates of the filing the nomination paper and their scrutiny, as the candidate had continued the contract through the proxy of his real brother. The relevant portions of the said judgment read out by the learned counsel are as follows:

> 22. Mr. Lalit, learned senior Counsel appearing on behalf of the appellant frankly and rightly submitted that in the present case by letter dated 30.1.1990, the contract did not come to an end under the above mentioned three categories, but according to him, the case of the appellant falls under the fourth category of contract coming to an end by breach. We are not satisfied that in the present case the contract came to an end by breach by writing the letter dated 30.1.1990 as sought to be submitted on behalf of the appellant. In the facts of the present case the contract had not come to an end but was sought to be continued through Patiram Gupta. It is an admitted fact that Patiram Gupta is the real brother and member of joint Hindu family with Sewaram appellant. Not only that, Patiram was also an attorney, holder of Sewaram during the relevant period. The correspondence even after 30.1.1990 has been made in the name of Sewaram appellant though signed by Patiram. In these circumstances, it cannot be believed that Sewaram had put an end to the contract by breach and the conduct of Sewaram and Patiram even prior to and after 30.1.1990 leads to an irresistible conclusion that the contract had not come to an end, and was subsisting, thereby incurring a disqualification under Section 9A of the Act. In case Sewaram wanted to put an end to the contract, in the normal course of behaviour and human conduct he should have gone personally to no less an authority than the Executive Engineer and to have put an end to the contract mutually or in case the concerned officers were not agreeable to end the contract mutually then he could have taken the step of ending the contract unilaterally by breach taking the risk of damages. The facts of the present case lead us to the conclusion that the appellant never intended nor in fact put an end to the contract, but continued with the contract through the proxy of his real brother, Patiram.

23. In the circumstances mentioned above, we are in agreement with findings recorded by the High Court in this regard that the contract with the PWD was subsisting on the date of filing the nomination and the date of scrutiny of the nomination papers and the appellant thus incurred a disqualification for contesting the election of Morena Assembly Constituency in the State of Madhya Pradesh.

40. Urging these submissions, Sri Ko.Channabasappa prays for the allowing of these petitions and for the imposition of heavy cost on the respondent.

41. Sri Prabhuling K. Navadgi, the learned counsel for the petitioner in E.P.No.3/2009 at the outset makes it clear that he does not propose to make any submission regarding the corrupt practice and undue influence on the voters. No issue is formulated on the corrupt practice or undue influence in E.P.No.3/2009. He submits that he is confining to demonstrate as to how the respondent is disqualified under Section 9A of the R.P Act for entering into the contract with the Government of India, which was subsisting as on the date of the scrutiny of the respondent's nomination paper and to the non-compliance with the requirements of Sections 36, 37 and 38 of the R.P.Act. He read out Section 36(5) of the R.P. Act to advance the submission that if the candidate is to be given the time to rebut the objections, it cannot be later than the next date of the date appointed for holding the scrutiny. The provisions contained in Section 36(5) are as follows:

"36. Scrutiny of nomination. -

> (5) The returning officer shall hold the scrutiny on the date appointed in this behalf under Clause (b) of Section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the retuning officer shall record his decision on the date to which the proceedings have been adjourned."

42. He submits that under Section 37(3) of the R.P. Act, the Returning Officer is required, after the completion of the scrutiny proceedings, to prepare the list of the validly nominated candidates and put it on his notice board. Thereafter, the validly nominated candidates have the opportunity of withdrawing their candidature under Section 37 of the R.P. Act. Before the scrutiny proceedings are completed, the question of any candidate withdrawing the nomination paper would not arise. It is only after providing the opportunity to the candidates to withdraw their candidature on the completion of the scrutiny that the list of the contesting candidates has to be prepared and published by the Returning Officer under Section 38 of the R.P.Act. In the instant case, these sequential requirements are not complied with.

43. He submits that there was a contract between the Principal, GMIT and the Deputy Commissioner, Davanagere. The transaction and disbursal of the funds is admitted by the respondent. The respondent's only defence that there was no contract as contemplated under Section 9A of the R.P.Act is not acceptable.

44. The learned counsel relies on the voluminous documentary evidence to show that there was a concluded contract. At Ex.P47 is the proposal given by the GMIT furnishing the estimate for the works. The official memorandum at Ex.P11 contains the approval for the execution of the works under the MPLADS by the Principal, GMIT. The letter (Ex.P46) issued by the office of the Deputy Commissioner to the Principal of GMIT is the contract awarded for 26 works. The documents at Ex.P49 and Ex.P50 are the purchase orders placed by the Principal, GMIT. The official memorandum (Ex.P51) shows the release of ₹29 lakhs towards 75% of the total cost of the work of ₹39 lakhs. Exs.P52, 53 and 54 also show the releasing of the amounts. Based on these documents, the learned counsel submits that there was an offer, acceptance and consideration for the formation of a contract.

45. The learned counsel submits that the progress report at Ex.P13, which was obtained under the Right to Information Act clearly shows that as on 2.6.2009 the construction of some bus-shelters was in progress. The nomination paper filed on 11.4.2009 ought to have been therefore rejected.

46. That the contract in question is not in the course of the trade or business of the respondent or of the GMIT does not come to the rescue of the respondent in any way. It is not necessary that a course of business based upon other transactions must first exist before the offending contract can be said to be in the course of business. In support of this submission, he read out the following portion of the Apex Court's judgment in the case of SRI C.V.K.RAO v. SRI DANTU BHASKARA RAO reported in AIR 1965 SC 93:

"3........ According to Mr.Chaudhury, it mattered not whether the mine was worked or not, but what mattered was that there was a subsisting contract for the supply of minerals to the appropriate Government. Mr.A.Vishwanantha Sastri, in reply, contended that the mining lease could not be regarded as a contract and further that it was not "in the course" of the trade or business of the respondent, and finally that, in any event, it was not a contract for the supply of goods. That it was in the course of business of the respondent almost goes without saying. It is not necessary, as Mr.Sastri suggested, that a course of business based upon other transactions must first exist before the offending contract can be said to be in the course of business. The contract may itself be the start of the business and the words "in the course of the business" would still be apt...................."

47. He submits that the respondent has stated in the affidavit filed by way of chief-examination that he (respondent) called upon the Deputy Commissioner to direct the implementing agency to complete the works carefully. The learned counsel submits that the contract under reference may not have been entered with the returned candidate but the person (Principal, 37 GMIT), who has entered into the contract has the linkage with the respondent. The learned counsel submits that the Principal, GMIT is an employee of Srishyla Educational Trust. He extensively refers to the deposition of Sri B.T.Patil (PW4).

48. That the service conditions of the employees were being regulated by the Srishyla Educational Trust and that the Principal is only an employee of the Srishyla Educational Trust stand established. The master-servant relationship between the two is established. In support of his submissions, he relied on the following authorities:

(i) AIR 1957 SC 264 - Dharangadhra Chemical Works Ltd. v. State of Saurashtra.

(ii) AIR 1955 SC 799 - Chattanatha Karayalar v. Ramachandra Iyer and another.

(iii) 1993 Supp.(2) SCC 46 - Sewaram v. Sobaran Singh.

49. The learned counsel submits that as per the admission of the respondent, the Srishyla Educational Trust is a public charitable trust. No life-trustee can renounce his trusteeship in a public charitable trust, unless it is done through the process of the court. A perusal of the trust deed would go to show that there is no mechanism envisaged for the resignation of a trustee. No office-bearers of the said Trust is given the special power under the presents of the trust deed to accept the resignation of a trustee.

50. The resignation is a bilateral act. It requires tendering of the resignation and the acceptance of the same. The unilateral act of the resignation of the respondent, in the absence of its acceptance in a manner known to law, does not take the respondent away from the said Trust. It is required to be held that the respondent continued to be the trustee of the Srishyla Educational Trust as on the date of filing the nomination on 11.4.2009. He sought to draw support from the Apex Court's judgment in the case of **MOTI RAM v. PARAM DEV AND ANOTHER** reported in (1993) 2 SCC 725. Paragraph Nos.16, 17 and 18 read out by him are as follows:

16. As pointed out by this Court, 'resignation' means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. [See : Union of India v. Gopal Chandra Misra.] If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and conditions governing it.

17. Under the Constitution of India there are various offices which can be relinquished by unilateral act of the holder of the office and acceptance of resignation is not required, e.g., President [Article 56(a)], Vice-President [Article 67(a)], Deputy Chairman of Rajya Sabha [Article 90(b)], Speaker and Deputy Speaker of Lok Sabha [Article 94(b)], Judge of the Supreme Court [Article 124(2)(a)], Judge of a High Court [Article 217 (1)(a)]. As regards member of either House of Parliament or a member of a House of Legislature of a State, originally, the position was that he could resign his office by unilateral act and the acceptance of resignation was not required. The requirement of acceptance of such resignation was introduced in Articles 101(3)(b) and 190(3)(b) by the Constitution (Thirty-third Amendment) Act, 1974. Similarly in Company Law, a Director of a company is entitled to relinquish his office at any time he pleases by proper notice to the company and acceptance of the resignation is not required. [See: Glossop v. Glossop, Halsbury's Law of England, 4th Ed., Vol. 7, p. 316, para 536].

18. A contract of employment, however, stands on a different footing wherein the act of relinquishment is of bilateral character and resignation of an employee is effective only on acceptance of the same by the employer. Insofar as Government employees are concerned, there are specific provisions in the service rules which require acceptance of the resignation before it becomes effective.

51. The learned counsel also read out Note No.890 and 891 from Halsbury's Laws, Volume 48. They are extracted hereinbelow:

890. Trustee's right to retire. A person cannot be compelled to remain a trustee and act in the execution of a trust; but according to the older authorities a trustee who has accepted a trust cannot from mere caprice or other trivial cause, or owing to some act or circumstances affecting himself personally, abandon the trust at the expense of the beneficiaries. He has, however, always been able to insist on being discharged at the expense of the trust property if he has served for a long time and is of advanced age and in failing health, or if much litigation has taken place, or other difficult circumstances have arisen in connection with the trust which did not exist and were not contemplated when he undertook the office. In such cases, if he cannot otherwise obtain his discharge, he may apply for it to a court of competent jurisdiction in proceedings to administer the trust. He is not bound to show that there is some other person ready to accept the trust. If no person is willing to accept the trust, it may be necessary to postpone the discharge of the trustee and keep him before the court; but, if this is done, the court takes care that he does not suffer thereby. Since, however, by statute a trustee now has the right to retire if he desires to do so, it would seem that a trustee should normally be allowed the costs of an application to the court if for any reason he is unable to take advantage of the statutory provisions.

891. Method of retirement. Except so far as authorised by statute or by the instrument, if any, creating the trust, a trustee may only retire during the continuance of a trust by the valid appointment of another trustee in his place.

By statute, where a trustee desires to be discharged from the trust, and after his discharge there will be either a trust corporation or at least two persons to act as trustees to perform the trust, then, if he

by deed declares that he is desirous of being discharged from the trust and if his co-trustees and such other person, if any, as is empowered to appoint trustees of the trust consent by deed to his discharge and to the vesting of the trust property in the co-trustees alone, he is deemed to have retired from the trust, and is, by the deed, discharged from it without any new trustee being appointed in his place.

52. Without prejudice to the aforesaid submission, the learned counsel advances the contention that the contract does not come to an end just because of the stated resignation of the respondent. The resultant position is that the entrustment of the works under the MPLADS to the Principal, GMIT and the continuation of those works as on the date of the respondent's filing the nomination paper, the rigors of Section 9A of R.P.Act are still attracted. The same is notwithstanding the respondent's stated withdrawal from the Srishyla Educational Trust. In this regard, the learned counsel read out the last part of paragraph No.13 of the Apex Court's judgment in the case of **KONAPPA RUDRAPPA NADGOUDA (supra):**

> "13.......... The law requires that a candidate should not have any interest in any contract with Government and even a partner has an interest sufficient to attract the provisions of Section 9A. Lastly it is argued that the partnership itself had been dissolved. That would have no effect upon the relations between the first respondent and the Government. The first respondent could not by a private dissolution of the partnership escape his liability under the contract to the Government and there was here no novation, because notice of the dissolution was not given to Government and the Government had not accepted Hampanna to whom the business was transferred in place of the firm. We view the transfer of the entire contracts to Hampanna with some suspicion. It appears that on the eve of the election, the first respondent who wished to contest the seat from Yadagiri, hurried through his contracts, managed to get a completion certificate which was not quite accurate, dissolved the partnership with a view to clear himself from all connections with the contracts so that he could stand for the election. In this effort, he has distinctly failed."

53. Sri Nargund, the learned counsel for the respondent in E.P.No.2/2009 submits that as the respondent did not have any contract, much less a subsisting contract with the appropriate Government, he has not suffered any disqualification under Section 9A of the R.P.Act. He submits that M.G.Thippeswamy, petitioner in E.P.No.3/2009, who is examined as PW2 has this to say in course of cross-examination:

> "I have no idea as to whether the Deputy Commissioner has entered into any contract with the Principal, GMIT based on Sri G.M.Siddeshwar's letter."

54. Sri Nargund submits that PW2 has admitted that he does not even know what is the trade or business of the respondent prior to 2004. He further submits that PW2 has admitted that he has not produced any document to show that the respondent is the President of Srishyla Educational Trust.

55. The election petitioner in E.P.No.2/2009 Sri Prasanna Kumar S, who is examined as PW1, has also stated that he does not know what business the respondent does. PW1 has further stated that he does not know whether the respondent has any licence or not. Such being the non-committal evidence, the election dispute is raised only on surmises and conjectures, so submits the learned counsel.

56. The learned counsel submits that the Parliament has clearly narrowed the area of disqualification. Earlier the disqualification provisions as contained in Section 7(d) of the R.P.Act stood as follows:

> "7. A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State...........
>
> d) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share of interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by the appropriate Government."

57. The afore-extracted provisions are repealed with effect from 14.12.1966 by Act No.47/1966. Now Section 9A introduced by the said Act reads as follows:

> **"9A. Disqualification for Government contracts, etc.** - A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government."

58. In view of the repeal of Section 7(d) and the introduction of Section 9A that the contract must be in the course of his trade or business by a person with the appropriate Government, there is a change in the statutory position. Previously, the contract need not have been in the course of trade or business to attract the disqualification. In support of his submission, the learned counsel relies on the Apex Court's judgment in the case of **LALITESHWAR PRASAD SAHI v. BATESHWAR PRASAD AND OTHERS** reported in **AIR 1966 SC 580**.

59. Just because the respondent was associated with the Srishyla Educational Trust, because GMIT is being managed by the said Trust and because the Principal, GMIT was the implementing agency for certain works under the MPLADS, it cannot be held that the respondent entered into the contract with the Government of India. He relies on the Apex Court's judgment in the case of **MANGILAL v. KRISHNAJI RAO PAWAR AND ANOTHER** reported in **AIR 1971 SC 1943**, wherein it is held that a contract for the supply of electricity by an Electricity Supply Company with the Government does not become "a contract entered into by a person in the course of his trade or business" by reason of the fact that he happened to be the Chairman of the Board of Directors at the relevant time.

60. The learned counsel denies that the Principal, GMIT is appointed as the implementing agency to favour anybody. He submits that the official memorandum (Anenxure-R19) was issued by the Deputy Commissioner to the Commissioner, Davanagere Municipal Corporation fixing the cost of construction at ₹1,50,000/- per bus-shelter. As the said Corporation vide its reply at Ex.R20 submitted higher estimate for the works, that is ₹2.20 lakhs for constructing one bus-shelter, the Principal, GMIT was appointed as the implementing agency, as he agreed to complete the works at ₹1,50,000/- per bus-shelter.

61. The learned counsel places reliance on the Apex Court's judgment in the case of **RANJEET SINGH v. HARMOHINDER SINGH PRADHAN** reported in **(1999) 4 SCC 517**. It is held therein that as Section 9A imposes disqualification on a citizen, a general or broad interpretation is not to be given; purposive interpretation is necessary. A subsisting contract for sale of liquor with the State Government as on the date of filing of the nomination paper as well as on the date of its scrutiny was held to be not falling within the expression "for supply of goods to or for the execution of any works undertaken by that Government." It was therefore held that disqualification under Section 9A is not attracted to the candidates having such contacts. The learned counsel has also relied on the Apex Court's judgment in the cases of **KARTAR SINGH BHADANA v. HARI SINGH NALWA AND OTHERS reported in (2001) 4 SCC 661 and JUGAL KISHORE PATNAIK v. RATNAKAR MOHANTY** reported in **AIR 1976 SC 2130.**

62. The learned counsel submits that the election cannot be invalidated on the ground that some instructions in the Election Manual are allegedly not followed, as the Manual or the hand-book does not have the statutory character. He read out the first part of paragraph No.39 of the Hon'ble Supreme Court's judgment in the case of **JITU PATNAIK v. SANATAN MOHAKUD AND OTHERS** reported in **(2012) 4 SCC 194**. It is as follows:

> "39. In view of the above legal position that the Handbook does not have statutory character and there being no non-compliance with the provisions of the Constitution or the 1951 Act any Rules framed or orders made under the 1951 Act by the Returning Officer insofar as the death of an independent candidate was concerned, the averments made in Para 7(A) of the election petition do not furnish any cause of action for declaring the election of the returning candidate to be void under Section 100(1)(d) (iv)......"

63. The learned counsel also takes serious objection to many of the annexures to the election petition not being produced in their entirely. He submits that the election petitioner Sri Prasanna Kumar, the petitioner in E.P. No.2/2009 is not even an elector in Davanagere Constituency. He has therefore no locus-standi to maintain this petition.

64. Sri Nargund submits that under MPLADS, the M.P.s are permitted to recommend specific kinds of works for the welfare of the people for building the durable community assets. He read out the relevant Guidelines of MPLADS. Under Guideline No.2.6 of the said Guidelines, the M.P. recommends the work and under Guideline NO.2,10, the Deputy Commissioenr would be generally the District Authority to implement the MPLADS in the District. Under Guideline NO.2.11, the District Authority shall identify the implementing agency. Guideline NO.3.19 even provides for the contribution form the public to the works recommended by the MPs. Under Guidelien No.6.5(iv) of the siad Guidelines, the implementing agency has to refund to the District Authority the saviangs (balance amounts). Going by the MPLADS, the implementing authority is not allowed to make any profits out of the works. Virtually it acts as a quality-controller and the superivsor of the works, su submits the learned counsel.

65. The learned Counsel submits that Sri Umesh, Accountant of GMIT, who is examined as RW2 has clearly stated that the amounts received from the Deputy Commissioner are disbursed to M/S. M.G.Engineering Works after obtaining the necessary vouchers and bills. He submits that Sri H.R.Suresh, Chartered Accountant of GMIT, Davanagere and of Srishyla Educational Trust, who is examined as RW7 has stated on oath that a sum of ₹93,85,000/- is received from the Deputy Commissioner; out of the said amount not even a single rupee is credited to the account of Srishyla Educational Trust or to the account of the respondent.

66. The learned counsel relies upon the Hon'ble Supreme Court's judgment in the case of **BHIM SINGH v. UNION OF INDIA AND OTHERS** reported in (2010) 5 SCC 538. In the said case, the constitutional validity of the MPLADS is upheld. The relevant paragraphs read out by him are extracted hereinbelow:

> 70. As discussed earlier, under the MPLAD Scheme, the MP concerned recommends works. The district authority verifies the eligibility and technical feasibility of each recommended work. Decision-making power in regard to technical, financial, administrative sanctions accorded under the Scheme, vests in the district level functionaries. The sanctioning of eligible works and their execution is done by the district authorities and the State Governments monitor the MPLAD

works implementation. Besides this, the nodal district authority has to co-ordinate with other districts falling in the same constituency (in case of Lok Sabha constituencies) and with all the districts in which the MP has recommended work (in case of Rajya Sabha MPs). Thus the nature of the Scheme is such that it requires considerable technical, administrative and accounting expertise, highly efficient co-ordination with variour agencies and organisations and a high degree of logistic and managerial support for its successful implementation. Only the district authorities possess all the above mentioned requisite competence and can effectively implement the scheme at the district level. Barring few irregularities, which are taken care of by the State Audit Authorities, the funds allocated under the MPLAD Scheme are being properly monitored for better utilisation to achieve the objections of the Scheme.

72.The second level of accountability is provided by the Guidelines themselves. As noted above, these guidelines have been continuously revised, the latest being the fourth time resulting in the Guidelines of 2005. As we have already adverted to, the Guidelines make it clear that the MPLAD Scheme is for the recommendation of works of developmental nature, especially for the creation of durable community assets based on local needs. According to the Guidelines, these include durable assets of national priorities like drinking water, primary education, public health, sanitation and roads, Clearly, the Scheme does not give a carte blanche to the MPs with respect to the kind of works they can recommend. Furthermore, under the Guidelines, once the MP recommends any work, the district authority in whose jurisdiction, the proposed works are to be executed, will maintain proper accounts, follow proper procedure for sanction and implementation for timely completion of works (vide Clause3.2).

97(6). Even though MPs have been given a seemingly executive function, their role is limited to "recommending" works and actual implementation is done by the local authorities. There is no removal of checks and balances since these are duly provided and have to be strictly adhered to by the Guidelines of the Scheme and Parliament. Therefore, the Scheme does not violate separation of powers."

67. Sri C.S.Shashikanth, the learned counsel for the respondent in E.P.No.2/2009 submits that the Apex Court in the case of **J.CHANDRASEKHARA RAO v. V.JAGAPATHI RAO AND OTHERS reported** in **1993 Supp. (2) SCC 229** has held that the burden is on the election petitioner to prove that some other candidate would have secured the highest number of votes but for the improper acceptance of the nomination paper of the returned candidate.

68. Sri Shashikanth read the commentary of S.K.Mendiratta on the adjournment of scrutiny proceedings from his book "All You Want to Know About Indian Elections" brought out by the Lexis Nexis Butterworths Wadhwa (First Edition 2009). It is as follows:

"Adjournment of Scrutiny Proceedings

The law envisages that the scrutiny proceedings shall be completed by the returning officer on the date fixed for the purpose itself and he shall not allow any adjournment of the proceedings, except when the same are interrupted or obstructed by riot or open violence or by any causes beyond his control [s.36(5), 1951 Act]. But if an objection is raised in regard to the nomination of any candidate, the returning officer can allow time to such candidate to rebut it and can adjourn the proceedings for the purpose. But such adjournment cannot be granted later than the next day but one, following the date fixed for scrutiny [proviso to s.36(5) ibid]. In other words, the scrutiny proceedings can be adjourned maximum up to the third day, which is normally the last date for the withdrawal of candidatures, and not beyond that date, so that the final list of contestants becomes available after the period for the withdrawal of candidatures is over."

69. He also submits that as per Rule 2(j) of the Conduct of Election Rules, 1961, the Returning Officer includes any Assistant Returning Officer performing any function he is authorised to perform under Section 22(2) of the R.P.Act. He submits that Section 22(2) of the R.P.Act states that every Assistant Returning Officer shall, subject to the control of the Returning Officer, be competent to perform all or any of the functions of the Returning Officer.

70. Sri P.S.Manjunath, the learned counsel for the respondent in E.P.No.3/2009 submits that the respondent has not suffered any disqualification for being chosen as and for being a Member of Parliament under Article 102 of the Constitution of India or under Section 9A of the R.P.Act. There are no averments in the election petition that the returned candidate has any contract with the Government.

71. Sri Manjunath submits that the trustees of Srishyla Educational Trust are not the beneficiaries. Therefore, the question of taking the personal benefits by the execution of the works under the MPLADS would not arise at all.

72. The learned counsel relies on the Apex Court's judgment in the case of **BHAGWAN SINGH v. RAMESHWAR PRASAD SHASTRI AND OTHERS** reported in **AIR 1959 SC 876,** wherein it is held that the returned candidate entering into contract in his capacity as the Mukhiya of the Gram Panchayat is not disqualified from membership of the State Legislature. He had no personal interest in the contract.

73. The learned counsel submits that the resignation by the respondent from their trusteeship of the Srishyla Educational Trust and its acceptance by the said Trust is in accordance with Clause 29 of the Trust Deed (Ex.P15). It is extracted hereinbelow:

> "29. Incase of death, inability, resignation or refusal on the part of any trustee to act as such trustee/s the remaining trustees shall be entitled to nominate any other person/s as they may think fit and proper to act as trustee in place of the trustee so deceased, refusing to act or being unable to act. Provided that the trustee so appointed shall have the same powers and rights as if she/he was originally appointed trustee under these presents."

74. The learned counsel submits that nobody can be compelled to remain a trustee for ever, if he does not expressly resign but merely refuses to perform his duties as a trustee. Alternative arrangements can be made as provided for invoking Clause 29 of the trust deed extracted hereinabove. In the instant case, the respondent has resigned which is duly accepted by the Trust. The resignation letter is at Ex.R22. The extract of the proceedings of the meeting in which his resignation was accepted is at Ex.R23.

75. He submits that Section 71(c) of the Indian Trust Act, 1882 provides for the discharge of the trustee by such means as may be prescribed by the instrument of trust. Clause 29 of the instrument of trust extracted hereinabove provides for the discharge of a trustee on account of his resignation.

76. He read out the averments contained in paragraph Nos.4, 5, 7, 9 and 10 of the E.P.No.2/2009 to advance the submission that no material facts and particulars are furnished. He submits that almost identical averments are made in E.P.No.3/2009. Both the petitions do not contain any material facts and particulars. The allegation that the amounts released under MPLADS are transferred to the account of Srishyla Educational Trust are not substantiated by any positive evidence.

77. The learned counsel brings to my notice the Apex Court's judgment in the case of **DEWAN JOYNAL ABEDIN v. ABDUL WAZED ALIAS ABDUL WAZAD MIAH AND OTHERS** reported in **1988 (Supp) SCC 580** where the holder of lease for collecting the toll at a Government ferry was held to be not the holder of office of profit.

78. The learned counsel submits that there is no infraction of any provision of law. Even assuming that there is an infraction of law, that alone would not be sufficient to invalidate the election. Unless the infraction of law has materially affected the outcome of the elections, the elections cannot be undone. No clinching evidence is adduced to show that the alleged infraction of law has materially affected the outcome of the elections.

79. The learned counsel submits that election cannot be declared void on mere surmises and conjunctions. In support of his submissions, he relies on the Hon'ble Supreme Court judgment in the case of SHIV CHARAN SINGH v. CHANDRA BHAN SINGH AND OTHERS reported in AIR 1988 SC 637. Paragraph Nos.6 and 7 of the said judgment read out by the learned counsel are extracted hereinbelow:

> "6. The question as to how and in what manner the burden of proving that the result of election was materially affected should be discharged is a vexed question which has been considered by this Court in a number of cases. In the leading case of **Vashist Narain Sharma v. Dev Chandra, [1955] 1 SCR 509:(AIR 1954 SC 513)** this Court considered this question at length. In that case the nomination paper of one Dudh Nath a contesting candidate who had polled 1983 votes was found to have been improperly accepted. The returned candidate had polled 12860 votes while Vireshwar Nath Rai had polled 10996 votes being the next highest number of votes. There was thus difference of 1864 votes between the votes polled by the returned candidate and the next unsuccessful candidate. The Election Tribunal set aside the election of the returned candidate on the finding that improper acceptance of the nomination paper of Dudh Nath had materially affected the result of the election. This Court set aside the order of the Tribunal on the ground that the election petitioner had failed to discharge the burden of proving that the result of the election had been materially affected. The Court observed as under:(atpp.515-516 of AIR):
>
> "But we are not prepared to hold that the mere fact that the votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all or a majority of the votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go

to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(l)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand."

7. Section 100 (l)(c) of the Act as it stood in 1952 was in pari materia with the present Section 100(l)(d)(1) of the Act. The interpretation of Section 100 (1)(c) of the Act as given by the Court in Vashist Narain Sharma's case (AIR 1954 SC 513) fully applies to the interpretation of Section 100(1)(d)(1) of the Act. In Vashist Narain Sharma's, case this Court has categorically held that the result of the election of the returned candidate cannot be materially affected merely for the reason that the number of votes polled by the candidate whose nomination paper was improperly accepted was greater than the margin of votes polled by the returned candidate and the candidate securing the next highest number of votes, because it could not be predicated in what manner or proportion the voters would have exercised their choice in the absence of the improperly nominated candidate from the election contest. Proceeding further the Court considered the question whether any speculation, or conjecture could be made in a case where the number of votes secured by the candidate whose nomination paper was improperly accepted was higher than the difference between the votes polled by the returned candidate and the candidate who may have polled the next highest number of votes. The Court observed that in such a case it was impossible to foresee what the result would have been if the improperly nominated candidate had not been in the field. Since it was not possible to anticipate the result, the election petitioner must discharge the burden of proving that fact, and on his failure to prove that fact the election of the returned candidate must be allowed to stand. Then the question arose as to how and in what manner the burden could be discharged by the election petitioner. On behalf of election petitioner an attempt had been made to discharge burden by producing a number of electors before the Tribunal who had stated that all or some of the votes would have gone to the candidate who had polled the next highest number of votes in the absence of the improperly nominated candidate and he would have polled majority of valid votes. The Court held that the statement of the witnesses as to in what manner votes would have been distributed among the remaining contesting candidates could not be relied upon in determining the question of material effect on the election of the returned candidate. The Court observed:(at p.516 of AIR):

"It is impossible to accept the ipse dixit of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. **<u>The question is one of fact and has to be proved by positive evidence. If the petitioner is unable to adduce evidence in a case such as the present, the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and that the election must stand.</u>** Such result may operate harshly upon the petitioner seeking to set aside the election on the ground of improper acceptance of a nomination paper, but neither the Tribunal, nor this Court is concerned with the inconvenience resulting from the operation of the law. **<u>How this state of things can be remedied is a matter entirely for the Legislature to consider.</u>** (Underlining by us)"

80. The learned counsel brings to my notice the Apex Court's judgment in the case of **<u>SMT.LATA DEVI (MALI) v. HARU RAJWAR</u>** reported in **AIR 1990 SC 19**. The last portion of paragraph No.18 read out by him is extracted hereinbelow:

"In the instant case there was no evidence to demonstrate the returned candidate having derived any benefit from the change of symbol of the election petitioner. Murura Dasi, to whom the 'bow and arrow' symbol was later allotted, was not the successful candidate. The election petitioner was required to show that such number of votes had gone in favour of the successful candidate instead of in favour of the petitioner, simply because of the change of symbol as would, without that number of votes, make the successful candidate unsuccessful. The petitioner, besides making bare statement, had not produced any other satisfactory evidence in support of such a proposition."

81. The learned counsel relies on the Apex Court's judgment in the case of **C.V.K.RAO (supra)** wherein it is held that the right reserved to the Government to the prior purchase of the minerals in a mining lease does not amount to subsisting contract for the supply of goods between the parties.

82. He submits that if a candidate desirous of withdrawing his nomination were to be present before the Returning Officer before the expiry of the time fixed for the withdrawal of the nomination papers, the withdrawal can be permitted even beyond 3.00 p.m. In support of this submission, he read out what the Returning Officer (PW6) said in the course of his cross- examination:

> "If the candidate or their proposers were present before thee expiry of the deadline, the process of receiving the nomination forms may go even beyond 3.00 p.m."

83. The learned counsel submits that PW3 has not produced any withdrawal form in support of his grievance that he wanted to withdraw his nomination, but was not permitted to do so.

84. The submissions of the learned counsel have received my thoughtful consideration. The C.Ds (M.O.1 and M.O.2) are opened on 31.10.2013. They are screened in the open Court. On viewing what was displayed on the screen, I find that the atmosphere was surcharged in and around the Returning Officer's office on 13.4.2009. The screening of the C.D.s shows that the arguments on the objections to the respondent's nomination paper and the rebuttal thereto were concluded at 1.41 p.m. At 2.46 p.m. the Returning Officer started reading his order over-ruling the objections and accepting the nomination paper of the respondent. The reading of the order went on till 3.02 p.m.

In Re.Issue No.1 in both the election petitions:

85. To examine this issue, the advertence to the provisions contained in Section 9A of the R.P.Act is necessary. The said Section reads as follows:

> **"9A. Disqualification for Government contracts, etc. -** A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government."

86. The perusal of the afore-extracted Section reveals that the following conditions have to exist for attracting the disqualification: (a) a person has entered into a contract (b) he has entered into the contract in the course of his trade or business (c) the contract is with the appropriate Government (d) the contract is for the supply of goods or the execution of any works by that Government (e) the contract is subsisting as on the date of the scrutiny of the nomination paper.

87. In the instant case, the respondent himself has not entered into any contract. The allegation is that the Principal, GMIT, who is only a mask for the respondent, has entered into the contract. This allegation is to be examined in the context of the changed legal regime. Earlier the subject of disqualification was governed by Section 7(d) of the R.P.Act. The said provisions are extracted hereinbelow:

> "7. A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State...........
>
> d) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share of interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by the appropriate Government."

88. The plain reading of these provisions reveals that a candidate whether by himself or through somebody else enters into the contract, in which he has any share of interest, would render him liable to be disqualified. But the legislature, in exercise of its wisdom, has replaced the afore-extracted provisions by Section 9A to the R.P.Act. The present Section 9A was enacted in the place of the former Section 7(d). The entire Chapter III of the R.P.Act, which inter alia included Section 7(d) is replaced by Act 47/1966 with effect from 14.12.1966.

89. Both the Section 7(d) and Section 9A contain the disabling provisions. But the difference between the two Sections is that the disabling provision in Section 7(d) is of absolute nature. On the other hand, the disabling provision in Section 9A is of conditional nature. The difference between the two provisions cannot be over-looked.

90. The courts should not strain the language of a statute in order to cover cases which are plainly excluded from the natural meaning of the words. The courts have to pay attention to the language of the statute with a rational regard to the aim and object of the legislature as manifested in the language of the Section. The courts cannot unduly enlarge the scope of a statutory provision, especially when it has the effect of curtailing the right or the freedom of a person to stand for election.

91. As held by the Apex Court in the cases of **Ranjeet Singh (supra) and Ram Padarath Mahto (supra)** a general or broad interpretation is not to be put on the statutory provisions, which impose disqualification on a citizen. As held by the Apex Court in the case of **Mangilal (supra),** Section 9A only covers the contracts, which have been entered into by a person in the course of his trade or business with the appropriate Government.

92. The petitioners have not shown that the contract is in the course of the respondent's business or trade. The petitioner in E.P.No.2/2009 has deposed that he does not know what business the respondent does. He has further stated that he does not know whether the respondent has any licence or not.

93. The issue can be examined from yet another angle. Whether a parallel can be drawn between the implementing agency under the MPLADS and the contractor. A contractor takes up the contract work with the profit motive. It goes without saying that he retains the profit; but the implementing agency is not permitted to make, much less retain any profit. Guideline No.6.5(iv) reads as follows:

> "The implementing agencies shall refund to the District Authority the savings (balance amounts) including interest, if any, at their disbursal within one month and close the bank account opened for the purpose."

94. Thus, the implementing agency acts as an extended organ of the Government. It virtually performs the obligations of the Government.

95. The implementing agency is not permitted to act as the regular or ordinary or normal contractors do. The Member of Parliament Local Area Development Scheme is such that no implementing agency is allowed to make or retain an iota of profit by executing the works. That is why the framers of the scheme appear to have consciously used the term 'implementing agency' and not 'contractor'. The nature of the said scheme is such that the implementing agency under the said scheme is not synonym with the word 'contractor' in the regular parlance.

96. A candidate holding a subsisting contract with the Government is disqualified for being chosen as a MP under Section 9A of the R.P.Act, because he is in a position after successful election to get the concession for himself in the performance of his contract. In the instant case, the question of extracting any concession by the implementing agency would not arise at all. The question of disqualification arising from contract with Government has to be decided on the basis of substance and not mere form. The implementing agency cannot be brought within the mischief of Section 9A of the R.P.Act.

97. As condition Nos.(a) and (b) supra in para No.86 are not present in the instant case, I answer issue No.1 in the negative.

<u>In Re.Issue No.2 in both the election petitions:</u>

98. The first point to be considered under this issue is whether the Returning Officer was justified in adjourning the scrutiny of the respondent's nomination paper from 11.4.2009 to 13.4.2009 and that too till 3.00 p.m. The proviso to Section 36(5) of the R.P.Act extracted supra states that the candidate to whose nomination paper the objection is raised can be given time to rebut the objections till the next day fixed for scrutiny. It is therefore the case of the petitioners that the respondent could not have been given the time beyond 12.4.2009.

99. The proviso to Section 36(5) is capable of being applied only if the day immediately following the day fixed for scrutiny is not a public holiday. If the next day happens to be a public holiday, then the scrutiny proceedings are to be resumed on the very next working day. The Parliament has given such an inkling in Section 30(a), (b) and (c) of the R.P.Act. Its provisions are extracted hereinbelow:

> **"30. Appointment of dates for nominations, etc.-** As soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint -
>
> (a) the last date for making nominations, which shall be the seventh day after the date of publication of the first-mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;
>
> (b) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday.
>
> (c) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday.
>
> (d)..................
>
> (d)................."

100. The perusal of these provisions indicate that if a day fixed for an event happens to be a public holiday, the proceedings are to be resumed on the succeeding day, which is not a public holiday.

101. Section 36(5) of the R.P.Act itself states that the Returning Officer shall hold the scrutiny on the date appointed in that behalf under Section 30(b) of the R.P.Act extracted hereinabove.

102. Further, the last part of Section 36(5) of the R.P.Act enumerates the circumstances, which act as exceptions to the embargo against the adjournment of the scrutiny proceedings. They are when the scrutiny proceedings are interrupted or obstructed (i) by riot (ii) by open violence and (iii) by cause beyond his control. The viewing of the C.D.s on the screen does not leave anybody in doubt that a pandemonium was prevailing in and around the office of the Returning Officer on 13.4.2009. It was impossible for him to have the scrutiny proceedings completed before 11.00 a.m. or immediately thereafter. The circumstances under which the Returning Officer had to hear the concerned parties on the objections to the nomination paper of the respondent and the respondent's rebuttal

thereto till 1.41 p.m. were beyond his control and within 1 hour 5 minutes of the conclusion of the hearing on the objections, the Returning Officer has promptly pronounced the order. Thus, I do not find any illegality or impropriety in the closure of the scrutiny proceedings at 3.02 p.m.

103. The next allied question is what credence can be given to the version of the petitioners that the order (Ex.P2) rejecting the objections to the nomination paper is not written by the Returning Officer. The reasoning of the petitioners in this regard is that the lengthy arguments were heard till 1.41 p.m. It was impossible for the Returning Officer to dictate the order, to have it transcribed by the stenographer, to check it and thereafter to pronounce it in 1 hour 5 minutes time.

104. The Returning Officer is a senior civil servant. He has deposed that he has the experience of being the Returning Officer in as many as 4 elections to the Lok Sabha. He has also admitted that he has received the special training for doing the work of a Returning Officer. He has further deposed that he had already gone through the citations furnished by the objectors. He has deposed as follows:

> "On 11.4.2009 itself, I had gone through the objections. I had gone through the citations furnished by the objectors. I am fairly conversant with the issues. I had even made my notes on the issues raised. On hearing the concerned person on 13.4.2009, I could dictate the order immediately.........."
>
> "...............I agree that the citations were given by the concerned persons on 13.4.2009. However, all the relevant decisions of the Hon'ble Supreme Court on the issue of office of profit were readily available in the office of the Returning Officer. I read them on Saturday and Sunday."

105. Considering all these aspects of the matter, it is difficult to accept the allegation of the petitioners that the order at Ex.P2 is not prepared by the Returning Officer or that it was prepared beforehand, that is even before the conclusion of the arguments on the objections to the respondent's nomination paper.

106. The next question is whether there was denial of opportunity to some candidates to withdraw their nomination papers and whether the same has materially affected the outcome of the elections in question. Admittedly, as per the calendar of events, the candidates were permitted to withdraw their nomination papers till 3.00 p.m. on 13.4.2009. The JD(S) candidate, Sri K.B.Kallerudreshappa (PW3) has stated on oath that he decided to withdraw his nomination paper in favour of the Congress candidate and that when he approached the Returning Officer in that regard, he refused to permit him to withdraw his nomination paper on the ground that the time for the same had lapsed. He has not produced the notice of withdrawal in Form No.5 prescribed by Rule 9(1) of the Conduct of Elections Rules, 1961. Even his intention to withdraw from the electoral fray is doubtful, as he has admitted that he had appointed the counting agent for him. He has also agreed that he has incurred some expenditure towards cut-outs, gates, arches, banners, hand-bills, posters, cassettes, etc. He has also confronted with Ex.R4 issued by the Returning Officer to the effect that seven validly nominated candidates withdrew their candidatures. If as many as seven candidates could withdraw their nomination paper, it is difficult to believe that PW3 had any difficulty in withdrawing his nomination paper.

107. Sri Y.S.Mahesh (RW5) who had filed his nomination as an independent candidate, has deposed that he went to the Assistant Returning Officer at 2.15 p.m. and withdrew it around 2.30 - 2.35 p.m.

108. The Returning Officer, who is examined as PW6 has stated that the application for withdrawing the nominations can be made even before the Assistant Returning Officer, if any candidate is present before the Returning Officer or Assistant Returning Officer before 3.00 p.m. on 13.4.2009. The relevant portions are extracted hereinbelow:

> "Suggestion: As you were continuously hearing the objections till you pronounced the order, the candidates did not get the opportunity to withdraw their nominations.
>
> Ans: The application for withdrawing the nominations can be made even before the Assistant Returning Officer. The candidates were given the opportunity to withdraw the nomination forms as per the Returning Officers Hand Book.
>
> Suggestion: The candidates cannot withdraw the nomination forms until the order on the scrutiny of the nomination forms is completed?
>
> Ans: Nomination forms can be withdrawn either before or after the completion of the scrutiny, provided they are present in the Returning Officer's Chamber before 3.00 p.m."
>
> ....
>
> "If the candidates or their proposers are present before the expiry of the deadline, the process of receiving the nomination forms may go even beyond 3.00 p.m." 76

109. Thus, these depositions and the list (Ex.R4) of seven candidates, who had withdrawn their candidatures clearly go to show that the candidates, who were present before the Returning Officer or Assistant Returning Officer before 3.00 p.m. on 13.4.2009 were permitted to withdraw their nominations.

110. The Returning Officer (PW6) has stated that the mistake in showing the initials of an independent candidate, namely, Sri L.S.Mallikarjuna was brought to his notice through the Sector Officers one day prior to the date of polling. He has further deposed that he has corrected it on the previous day itself. In the polling stations, where the error could not be corrected on the previous day, it came to be corrected in the first hour of the polling.

111. Even assuming that there is an infraction of law, the election cannot be invalidated, unless it is shown that the said infraction of law has materially affected the outcome of the election.

112. The burden of showing that the votes cast in favour of Sri K.B.Kallerudreshappa, a JD(S) candidate would have gone to the Congress candidate, Sri S.S.Mallikarjuna is on the petitioners. Similarly, the burden of showing that some voters got confused because of the incorrect showing of the initials of an independent candidate, L.S.Mallikarjuna as S.S.Mallikarjuna is also on the petitioners. It will not do merely to say that all or majority of the wasted votes might have gone to the next highest bidder. The casting of the votes at an election depends upon the variety of factors and it is not possible for anyone to predicate how many or which proportion of the voters will go to one or the other of the candidates. While it must be recognized that the petitioners in such a case are confronted with a difficult situation, it is not possible to relive them of the duty imposed upon them by law and hold without evidence that the duty has been discharged.

113. In saying so, I am fortified by the Apex Court's judgment in the case of **VASHIST NARAIN SHARMA v. DEV CHANDRA** reported in **AIR 1954 SC 513.** The position is lucidly reiterated by the Supreme Court in the case of **Shiv Chanran Singh (supra)** as follows:

> "It is no doubt true that the burden which is placed by law is very strict; even if it is strict, it is for the courts to apply it. It is for the legislature to consider whether it should be altered. If there is another way of determining the burden, the law should say it and not the courts."

In Re.Issue No.3 in E.P.No.2/2009:

114. The pleadings leading to the formulation of issue No.3 are raised only to be rejected. No serious endeavors are made on behalf of the petitioners to show that the respondent has committed corrupt practice within the provisions of Section 123(2) of the R.P.Act. Nothing is produced on record to show that one Smt.Kasturamma was the agent of the respondent. Besides she is also acquitted of the offences in Spl.C.SC/ST.No.11/2009 by the Court of the Principal and Sessions Judge, Davanagere by his judgment, dated 21.9.2011 (Ex.R24). The final report in Crime No.103/2009 (Ex.R5) shows that Sri B.P.Harish and two others are already dropped from the criminal proceedings for want of evidence. It may be noted that the petitioners averred in the election petition that Sri Vijaya Kumar Kondajji and his wife Smt.Honnamma were abused and threatened by Sri B.P.Harish. The petitioners have failed to show that either the respondent has committed any corrupt practice or somebody for and on behalf of him have committed the same with his knowledge and consent.

115. Sri Prasanna Kumar, the petitioner in E.P.No.2/2009, who is examined as PW1, has deposed that he does not knowwhether Vijaya Kumar Kondajji died on 30.4.2009 due to heart- failure, although he has averred in the election petition that he died due to the election-related violence.

116. As the petitioners have not produced any clinching evidence to show that the respondent or his agents have committed any corrupt practices or exerted undue influence on the voters, I answer issue No.3 in the negative.

In Re.Issue No.4 in E.P.2/2009 and Issue No.3 in E.P.No.3/2009:

117. In view of the answering of the earlier issues in the negative, this issue is liable to be answered in the negative and accordingly it is answered.

118. In the result, I hold that the election petitioners have failed to prove that the respondent's nomination paper is improperly accepted and/or that there is any infraction of law materially affecting the outcome of the election in question. **Both the election petitions are dismissed. No order as to costs.**

119. The Office is directed to intimate the substance of this decision to the Election Commission and to the Speaker of Lok Sabha expeditiously and also to send an authenticated copy of this decision to the Election Commission in compliance with the requirements of Section 103 of the R.P.Act, 1951.

Sd/-
JUDGE

Assistant Registrar,
High Court of Karnataka

MD/CM

LIST OF WITNESS EXAMINED FOR THE PETITIONERS

SL. NO.	NAME	RANK
1.	Prasanna Kumar. S	PW-1
2.	M.G.Thippeswamy	PW-2
3.	K.B.Kallerudreshappa	PW-3
4.	B.T. Patil	PW-4
5.	DR. S.G.Hiremath	PW-5
6.	N. Manjunath Prasad	PW-6

LIST OF WITNESS EXAMINED FOR THE RESPONDENTS

SL. NO.	NAME	RANK
1.	G.M. Siddeshwar	RW-1
2.	P.T.Umesh	RW-2
3.	K.G. Kumar	RW-3
4.	A.M. Shambulingappa	RW-4
5.	Y.S.Mahesh	RW-5
6.	B. Gyanaprakash	RW-6
7.	H.R. Suresh	RW-7

LIST OF DOCUMENTS MARKED

SL. No.	EXHIBIT DETAILS	EXHIBIT NOS.
1.	Declaration of the result of election	Ex-P1
2.	Order on the scrutiny of the nomination paper of the respondent.	Ex-P2
3.	C.D.s covering the scrutiny proceedings.	Ex-Mo1 to 6
4.	Signature of the Returning Officer on MO1 and MO2	Ex-MO1 (a) Ex-MO2 (a)
5.	The nomination paper of the respondent.	Ex-P3
6.	Note-sheet, dated 11.04.2009 of the Returning Officer.	Ex-P4
7.	Objection statement of Sri Maruthi to the nomination paper of the respondent.	Ex-P5
8.	Objection statement of Sri Alur Lingaraj to Ex-P6 the respondent's nomination paper.	Ex-P6
9.	The respondent's letter dated 30.06.2007 to the Deputy Commissioner pertaining to the constructions of bus shelters under MPLADS.	Ex-P7
10.	Respondent's letter dated 02.11.2007 to the Deputy Commissioner regarding the construction of 26 bus shelters under MPLADS	Ex-P8
11.	Respondent's letter dated 10.10.2008 to the Deputy Commissioner regarding the construction of one bus shelter near SOG colony.	Ex-P9
12.	Respondent's letter dated 10.10.2008 to the Deputy Commissioner for construction of three bus shelters.	Ex-P10
13.	Deputy Commissioner's order dated 03.12.2008 pertaining to the construction of one bus shelter near S.O.G. colony, Davanagere.	Ex-P11
14.	Deputy Commissioner's Official Memorandum, dated 03.12.2008 pertaining to the construction of bus-shelters in Honnali Taluk.	Ex-P12
15.	Progress report pertaining to the works implemented under MPLADS as on 02.06.2009.	Ex-P13
16.	Letter of the Income Tax Officer dated 08.06.2009 issued to PW1.	Ex-P14
17.	Trust deed dated 21.08.2001.	Ex-P15
18.	Janata Vani issue, dated 17.04.2009	Ex-P16

SL. No.	EXHIBIT DETAILS	EXHIBIT NOS.
19.	Samyukta Karnataka issue dated 18.04.2009.	Ex-P17
20.	Prajavani issue dated 01.05.2009.	Ex-P18
21.	List of the names of the contesting candidates.	Ex-P19
22.	List of candidates issued in Form No. 7-A dated 13.04.2009.	Ex-P20
23.	Name of S S Mallikarjuna shown in Form No. 7-A at Sl.No.2.	Ex-P20(a)
24.	Name of L S Mallikarjuna shown in Form No. 7-A at Sl.No.17.	Ex-P20(b)
25.	Representation dated 30.04.2009 of Sri S.S. Ganesh to the Chief Electoral officer	Ex-P21
26.	Letter dated 29.04.2009 of Sri H.S.Shivashankar to Superintendent of Police, Davanagere.	Ex-P22
27.	Complaint dated 30.04.2009 of Smt. Honnamma	Ex-P23
28.	Typed copy of the said complaint	Ex-P23(a)
29.	Respondent's letter dated 30.06.2007 to the Deputy Commissioner Davanagere pertaining to the construction of bus-shelters.	Ex-P24
30.	Respondent's letter dated 2.11.2007 to the Deputy Commissioner Davanagere pertaining to the construction of bus-shelters.	Ex-P25
31.	Trust deed dated 21.08.2008	Ex-P26
32.	Respondent's letter dated 17.08.2008 to the Deputy Commissioner Davanagere for the release of additional funds towards the construction of bus-shelters.	Ex-P27
33.	Official memorandum dated 15.09.2008 of the Deputy Commissioner, Davanagere	Ex-P28
34.	Respondent's letter dated 10.10.2008 to the Deputy Commissioner, Davanagere	Ex-P29
35.	Respondent's letter dated 10.10.2008 to the Deputy Commissioner, Davanagere.	Ex-P30
36.	Official memorandum dated 03.12.2008 issued by the Deputy Commissioner, Davanagere for construction of one bus shelter at SOG Colony, Davanagere.	Ex-P31
37.	Official Memorandum dated 03.12.2008 issued by the Deputy Commissioner, Davanagere.	Ex-P32
38.	Progress Report of the works under MPLADS.	Ex-P33
39.	Nomination paper of the respondent No. 1	Ex-P34
40.	Objection statement, dated 11.04.2009 of Sri H.Maruthi to the respondent's nomination.	Ex-P35
41.	Objection statement, dated 11.04.2009 of Sri Alur Lingaraju to the respondent's nomination paper.	Ex-P36
42.	The Deputy Commissioner's order, dated 13.04.2009 on the scrutiny of the respondent's nomination paper	Ex-P37
43.	Janatha Vani issue dated 17.04.2009	Ex-P38
44.	Samyuktha Karnataka issue dated 18.04.2009	Ex-P39
45.	Prajavani issue dated 01.05.2009	Ex-P40
46.	List of candidates in Form No.7-A dated 13.04.2009.	Ex-P41
47.	List of names of the contesting candidates.	Ex-P42
48.	Copy of the complaint, dated 30.04.2009 of Sri S.S.Ganesh to the Chief Electoral officer.	Ex-P43
49.	Declaration of the result of the Election by the Returning Officer, Davanagere in Form No. 21C dated 16.05.2009	Ex-P44
50.	Official Memorandum dated 15.09.2008 issued by the Deputy Commissioner.	Ex-P45
51.	Deputy Commissioner's letter dated 15.11.2007 to the Principal, GMIT.	Ex-P46
52.	Letter dated 03.03.2008 of the Principal GMIT to the Deputy Commissioner, Davanagere.	Ex-P47
53.	Letter dated 11.01.2008 by Commissioner, Mahanagara Palike, Davanagere to the Deputy Commissioner.	Ex-P48
54.	Purchase order dated 22.01.2008 by GMIT with M/s M.B. Engineering Enterprises	Ex-P49

SL. No.	EXHIBIT DETAILS	EXHIBIT NOS.
55.	Purchase order dated 15.03.2008 by GMIT with M/s M.B Engineering Enterprises	Ex-P50
56.	Official Memorandum dated 11.03.2008 by Deputy Commissioner.	Ex-P51
57.	Official Memorandum dated 11.03.2008 of the Deputy Commissioner.	Ex-P52
58.	The Deputy Commissioner's letter dated 13.03.2008 to the Principal of GMIT,Davanagere.	Ex-P53
59.	Show Cause Notice dated 08.04.2008 issued by the Deputy Commissioner, Davanagere to the Principal GMIT, Davanagere	Ex-P54
60.	Reply dated 08.04.2008 by the Principal, GMIT to the Deputy Commissioner,Davanagere.	Ex-P55
61.	Letter dated 08.04.2008 by the Commissioner, Mahanagara Palike, Davanagere to the Principal, GMIT.	Ex-P56
62.	Notice dated 09.04.2008 issued by the Deputy Commissioner to the Principal, GMIT.	Ex-P57
63.	Request letter dated 11.04.2008 by the Principal GMIT to the Deputy Commissioner-cum-Returning Officer.	Ex-P58
64.	The letter dated 05.08.2008 by the Proprietor, M.B. Engineering Enterprises to the Principal, GMIT regarding the increase in quotation.	Ex-P59
65.	The Official Memorandum, dated 29.08.2008 of the Deputy Commissioner.	Ex-P60
66.	The Official Memorandum, dated 29.08.2008 of the Deputy Commissioner.	Ex-P61
67.	The letter dated 02.09.2008 by the Principal GMIT to the Deputy Commissioner.	Ex-P62
68.	The letter dated 02.09.2008 by the Principal, GMIT to the Deputy Commissioner.	Ex-P63
69.	The official memorandum dated 15.09.2008 of the Deputy Commissioner.	Ex-P64
70.	The Official Memorandum dated 15.09.2008 of the Deputy Commissioner.	Ex-P65
71.	The letter dated 07.10.2008 by the Principal, GMIT to the Tahsildar, Harihara Taluk.	Ex-P66
72.	The Official Memorandum dated 20.10.2008 of the Deputy Commissioner.	Ex-P67
73.	The Official Memorandum dated 20.10.2008 of the Deputy Commissioner	Ex-P68
74.	The Official Memorandum dated 03.12.2008 of the Deputy Commissioner.	Ex-P69
75.	The Official Memorandum dated 02.06.2009 of the Deputy Commissioner.	Ex-P70
76.	Statement of accounts of the Principal, GMIT	Ex-P71 P71 a (1) to a(9) P71b (1) to b(19)
77.	Ledger Account Statement of Principal, GMIT	Ex-P72
78.	Ledger Account Statement of MB Engineering Enterprises	Ex-P73
79.	Declaration of the result of Election in Form No.21C.	Ex-P74
80.	Respondent's letter dated 30.06.2007 to the Deputy Commissioner.	Ex-P75
81.	Respondent's letter dated 02.11.2007 to the Deputy Commissioner.	Ex-P76
82.	Respondent's letter dated 17.08.2008 to the Deputy Commissioner.	Ex-P77
83.	The Official Memorandum, dated 15.09.2008 of the Deputy Commissioner.	Ex-P78
84.	Respondent's letter, dated 10.10.2008 to the Deputy Commissioner	Ex-P79
85.	Respondent's letter, dated 10.10.2008 to the Deputy Commissioner.	Ex-P80
86.	The Official Memorandum dated 03.12.2008 of the Deputy Commissioner.	Ex-P81
87.	The Official Memorandum, dated 03.12.2008 of the Deputy Commissioner.	Ex-P82
88.	Progress Report pertaining of the works under the MPLADS as on 02.06.2009.	Ex-P83
89.	Inspection report, dated 21.10.2008 pertaining to twenty six bus-shelters.	Ex-P84
90.	Inspection and work completion report in respect of Sri Rama Devastana, P.B.Road.	Ex-P85
91.	Inspection and work completion report in respect of Moti Doddappa Baavi, K.B.G.Nagar	Ex-P86
92.	Inspection and work completion report in respect of Siddaveerappa Extension	Ex-P87

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SL. No.	EXHIBIT DETAILS	EXHIBIT NOS.
93.	Inspection and work completion report in respect of Bharat Colony, RMP Road	Ex-P88
94.	Request letter dated 20.09.2008 by the respondent to the Deputy Commissioner.	Ex-P89
95.	Objection statement, dated 11.04.2009 of Sri H.Maruthi to the Election Officer.	Ex-P90
96.	Objection statement dated 11.04.2009 of Sri Aaluru Ningaraj to the Election Officer	Ex-P91
97.	Order of the Returning Officer on the scrutiny of the nomination paper of respondent No.1	Ex-P92
98.	List of contesting candidates in Form No.7-A	. Ex-P93
99.	Nomination paper, dated 08.04.2009 of the respondent No.1.	Ex-P94

SL. NO.	EXHIBIT DETAILS	EXHIBIT NOS.
1.	Janata Vani issue, dated 18.04.2009	Ex-R1
2.	Janata Vani issue, dated 19.04.2009	Ex-R2
3.	Vijaya Karnataka issue, dated 18.04.2009	Ex-R3
4.	Notice of withdrawal of candidatures in Form No. 6 dated 13.04.2009	Ex-R4
5.	Charge sheet dated 30.04.2009 filed in Crime No.103/2009	Ex-R5
6.	Nagaravani issue, dated 17.04.2009	Ex-R6
7.	Jana-miditha issue, dated 17.04.2009	Ex-R7
8.	Jana-miditha issue, dated 18.04.2009	Ex-R8
9.	Jana-miditha issue, dated 19.04.2009	Ex-R9
10.	Jana-miditha issue, dated 20.04.2009	Ex-R10
11.	Jana-miditha issue, dated 23.04.2009	Ex-R11
12.	Letter dated 30.04.2009 by the Deputy Commissioner/ Returning Officer to the Chief Electoral Officer	Ex-R12
13.	Janata Vani issue, dated 14.04.2009	Ex-R13
14.	Nomination paper of the respondent No.1	Ex-R14
15.	Nomination paper of Sri B Gyana Prakash	Ex-R15
16.	Nomination paper of Sri S.S Mallikarjuna	Ex-R16
17.	Nomination paper of Dr. Raju C	Ex-R17
18.	List of validly nominated candidates in Form No. 4 dated 13.04.2009	Ex-R18
19.	Official Memorandum of the Deputy Commissioner dated 23.07.2007.	Ex-R19
20.	Letter dated 28.07.2007 of the Commissioner Mahanagarapalike Davanagere to the Deputy Commissioner.	Ex-R20
21.	Official Memorandum, dated 28.07.2007 of the Deputy Commissioner.	Ex-R21, 21(a)
22.	The respondent's resignation letter dated 16.03.2009 for the position of the Life Trustee, etc	Ex-R22
23.	Resolution regarding acceptance of resignation of the respondent for the posts of Trustee and the Chairman of Trust.	Ex-R23
24.	24 Judgment dated 21.09.2011 in Spl.C. SC/ST/No.11/2009	Ex-R24

Sd/-
JUDGE

Assistant Registrar
High Court of Karnataka
Bangalore-560 001.

P.T. KULKARNI

Deputy Chief Electoral Officer &
Ex-Offico Deputy Secretary to Govt.
DPAR (Elections)

PR – 28

SC - 100

ಮುದ್ರಕರು ಹಾಗೂ ಪ್ರಕಾಶಕರು:– ಸಂಕಲನಾಧಿಕಾರಿಗಳು, ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ, ಸರ್ಕಾರಿ ಕೇಂದ್ರ ಮುದ್ರಣಾಲಯ, ಬೆಂಗಳೂರು–59